



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

1. REPORTABLE: Yes
2. OF INTEREST TO OTHER JUDGES: Yes
3. REVISED:

DATE: 8 May 2026

SIGNATURE OF ACTING JUDGE:

Case no: 2025-222413

In the matter between:

NTUTHUKO SHEZI

Applicant

and

LIVESTOCK WEALTH (PTY) LTD

First Respondent

COMPANIES AND INTELLECTUAL

PROPERTY COMMISSION

Second Respondent

MIC KHULISANI VENTURES (PTY) LTD

Third Respondent

And

Case no: 2024-129396

In the matter between:

MIC KHULISANI VENTURES (PTY) LTD

Applicant

and

LIVESTOCK WEALTH (PTY) LTD

Respondent

JUDGEMENT

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date and time for hand-down is deemed to be 8 May 2026.

PRETORIUS AJ:

[1] This judgment concerns two applications which were heard simultaneously pursuant to a directive of Deputy Judge President Sutherland on 12 December 2025. The first application is a liquidation application (case number 2024-129396) brought by MIC Khulisani Ventures (Pty) Ltd (*MIC*) seeking a winding-up order of the respondent Livestock Wealth (Pty) Ltd (*Livestock*). The second application (case number 2025-222413) is an application by Mr Ntuthuko Shezi (*Mr Shezi*) seeking that Livestock be placed under supervision and commencing business rescue proceedings.

[2] The business rescue application was brought on 20 November 2025. At that stage the liquidation application was already pending and was set down for hearing on the opposed motion roll on 26 November 2025 when it served before Van der Merwe AJ. Application was made for the postponement of the liquidation application to accommodate the business rescue application. The business rescue application was issued during the week before the hearing of the liquidation application and the postponement application was brought the day before the liquidation application was set down to be heard. When an application for business rescue is brought under such circumstances, it often indicates an abuse designed to frustrate the hearing of a pending liquidation application.

[3] On 26 November 2026 Van der Merwe AJ granted an order in terms of which the liquidation application was postponed sine die and Mr Shezi was ordered to pay the wasted costs occasioned by the postponement on an attorney and client scale. Van der Merwe AJ subsequently provided reasons for his order. One of the issues raised before Van der Merwe AJ was whether the business rescue application at that stage constituted an abuse to the extent that it was brought to delay the liquidation application. Van der Merwe AJ considered the issue and provided a short judgement in regard thereto. I therefore do not revisit the issue. Suffice it to say that Van der Merwe AJ found that the business rescue application did not constitute an abuse and accordingly that the liquidation application was stayed for purposes of section 131(6) of the Companies Act 71 of 2008 (*the 2008 Act*). As mentioned, both applications were set down pursuant to the directive for hearing during the week of 26 January 2026.

[4] In terms of the moratorium provided for in section 131(6) of the 2008 Act, the business rescue application needs to be dealt with first. MIC initially opposed the business rescue application on the basis set out in its rule 6(5)(d)(iii) notice. Having considered Van der Merwe AJ's reasons for his order to grant the postponement, it appears that, although he considered at least MIC's argument that the business rescue application was an abuse and found that it was not, he did not address all the issues raised by MIC in its notice. However, Ms Mokale (who appeared for MIC) informed me that MIC was not persisting with its opposition to the business rescue application. Instead, MIC's stance is straight forward: unless the business rescue application is successful, the winding-up of the company would inevitably follow.

Background

[5] The background facts, as appear from the affidavits in both applications, are as follows.

[6] Livestock's web-based platform enables individuals to purchase small agricultural assets such as trees, oxen or cows from farmers. These individuals may lack the necessary farming knowledge, own no farmland or cannot farm with economies of scale. The farmers retain the assets and repurchase them at an agreed future price. Livestock acts as a middleman between buyers and farmers, earning income from commissions on brokering deals. This business model is known as "*crowdfarming*".

[7] According to Mr Shezi, Livestock's business growth has been slow due to high startup and overhead costs, particularly for employee, advertising, consulting and accountant fees. It

is a small business with significant administrative challenges. Some farmers defaulted on their contracts with buyers. Buyers who were angered and disappointed would blame Livestock. This threatened the reputation of Livestock and so it acquired these contracts and provided the funds to pay the buyers, despite not legally obligated to do so, which resulted in Livestock burning through capital.

[8] Mr Shezi further says that he invested more than R30 million in Livestock. However, Livestock required an additional investment partner to provide venture capital and expert advice for business growth. For this reason, MIC was approached. On 28 July 2022 Livestock and MIC concluded a convertible loan agreement in terms of which MIC agreed to advance R3 million to Livestock with the option to convert the loan into an equity stake with future equity investment commitments (*the loan agreement*).

[9] Pursuant to the loan agreement, which is common cause:

(9.1) R3 million in funds were advanced to Livestock on 31 August 2022.

(9.2) The loan would attract interest from 1 August 2022.

(9.3) On the maturity date, 31 July 2025, MIC would have an election either to convert all or any part of the loan into conversion shares or request repayment of the R3 million loan plus the accumulated interest.

(9.4) Livestock would provide MIC with regular performance information including monthly management accounts, monthly statements on all bank accounts used by Livestock and quarterly reporting on unaudited financial results with budget versus actual reconciliation.

(9.5) An event of default would occur inter alia if Livestock:

(9.5.1) does not comply with any term of the loan agreement, unless the non-compliance is capable of remedy and is remedied in full within 30 days of the earlier of the date on which MIC gives notice of the breach to Livestock and the date on which Livestock becomes aware of the non-compliance.

- (9.5.2) is or is deemed to be unable to pay its debts as they fall due;
 - (9.5.3) admits an inability to pay its debts as they fall due;
 - (9.5.4) suspends making payments on any of its debts or announces an intention to do so;
 - (9.5.5) by reason of actual or anticipated financial difficulties, it begins negotiations with any creditor for the rescheduling of any of its indebtedness;
 - (9.5.6) the value of its assets is less than its liabilities; or
 - (9.5.7) a moratorium is declared in respect of any of its indebtedness.
- (9.6) If an event of default occurs and is continuing, MIC may by notice to Livestock and without prejudice to any other rights or remedies which MIC may have under the agreement or at law:
- (9.6.1) declare that all or part of any loan capital outstanding is immediately due and payable and/or payable on demand by MIC; and/or
 - (9.6.2) claim immediate payment of all or part of the loan capital outstanding.

[10] The loan agreement afforded MIC the right to appoint a director to Livestock's board and veto shareholder resolutions on certain issues, effectively granting it special voting rights. These rights were not exercised by MIC. According to Mr Shezi, both parties expected the loan to be converted into share capital, similar to preference shares with conversion and redemption rights. He explained that the convertible loan was recorded in Livestock's books as an equity investment that increased its equity reserves. Mr Shezi concedes, however, that MIC could have redeemed the loan on the maturity date, being 31 July 2025.

[11] In December 2023 MIC addressed correspondence to Livestock regarding its failure to comply with its obligations in terms of the loan agreement and the shareholders agreement. In particular, Livestock was obliged in terms of the loan agreement to provide MIC with regular financial performance information including management accounts, bank statements and

budgeting plans but had failed to do so. Furthermore, MIC recorded that Livestock had failed to provide sufficient information to a service provider, Enterprise Room (Pty Ltd (*Enterprise*), who was appointed in November 2023 to assist Livestock in improving its reporting obligations and providing an accurate balance sheet. MIC afforded Livestock until 5 February 2024 to remedy its default. Instead of addressing MIC's demand to remedy its breach Livestock requested, on 5 February 2024, a further loan from MIC to enable Livestock "*to pay out overdue investor returns*".

[12] On 24 January 2024, the Financial Sector Conduct Authority (*FSCA*) issued a warning to the public. It advised caution when dealing with Livestock Wealth Financial Services (Pty) Ltd and Livestock Wealth (Pty) Ltd (the subject company in this matter). The FSCA warned that Livestock might be unlawfully offering investments in livestock and agricultural products with potentially profitable returns. However, so it was reported, Livestock was not authorised to provide financial services under the Financial Advisory and Intermediary Services Act, 2002. The FSCA confirmed that it has commenced an investigation against Livestock. During argument the parties advised me that there had been some developments regarding the investigation and that they would approach me with a request, if necessary, to advance further evidence in regard thereto. To date, I was not approached by the parties in this regard.

[13] Following the release of the cautionary notice, Livestock's apparent reluctance to cooperate with Enterprise and its subsequent request for a cash injection prompted MIC to consult with its attorneys (*ENS*). On 15 February 2024, ENS addressed a letter to Livestock which referenced the 12 December 2023 letter and outlined MIC's concerns about Livestock's financial difficulties.

[14] On 21 February 2024 Livestock said in a letter that it had taken steps to meet its financial reporting obligations by cooperating with requests from Enterprise, that Livestock requested a shareholder loan from MIC because Mr Shezi, a shareholder, had already lent Livestock money, that shareholder loans are advanced for various reasons and that the request does not necessarily indicate financial distress, that the FSCA investigation was ongoing and that it agrees to provide MIC with financial information reflecting its current financial status and ability to pay debts within 30 days of the letter. Livestock did not provide the information.

[15] Enterprise released a report on Livestock in May 2024. The report indicated that Livestock was liable to repay all buyers and was factually insolvent due to farmers' default. It was inter alia reported that Livestock *"appears to be experiencing cash flow challenges as angry investors call on a daily basis asking when they can expect payment from their matured investments. [Livestock's] policy states that once a withdrawal request is made investors can expect a turnaround time of 30 business days, however, this has not been the case due to various reasons including insufficient funds being collected from farmers."* Mr Shezi disputes this finding alleging it was done deliberately at MIC's instruction for unclear reasons which appear to be in bad faith.

[16] On 24 June 2024, ENS confirmed in a letter to Livestock that it is unable to pay its debts, has not paid investors as required and is clearly in financial distress. Consequently, an event of default has occurred under the agreement and Livestock has failed to rectify the situation. MIC accordingly declared the loan capital outstanding immediately due and payable and demanded immediate payment. On 31 July 2024, Livestock's attorneys (CDH) denied the default event.

[17] On the same day, MIC through ENS issued a statutory demand in terms of s 344(f) read with s 345(1) of the Companies Act, 61 of 1973 (*the 1973 Act*) to pay the loan, or to secure or compound for it in three weeks. On 20 August 2024, CDH wrote to ENS in which Livestock denied being indebted to MIC due to a default under the agreement and claimed that the statutory demand constituted an act of in terrorem, abuse of process and mala fides.

[18] Further correspondences were exchanged between the attorneys regarding a dispute, which I will return to when I deal with the liquidation application below.

[19] MIC then brought the liquidation application on 11 November 2024. As mentioned, Mr Shezi brought the business rescue application on 20 November 2025, a few days before the hearing of the liquidation application.

The business rescue application

[20] The business rescue application was not further opposed by MIC despite being cited as the third respondent.

[21] Provided that the applicant is an affected person and that all formalities required have been complied with, there are essentially two legs to the enquiry whether a court should order placing a company under supervision and commencing business rescue proceedings. The first leg is whether the company is financially distressed within the meaning of section 128(1)(f) and section 131(4)(a)(i) of the 2008 Act. The second leg is whether there is a reasonable prospect for rescuing the company within the meaning of section 131(4)(a) of the 2008 Act.

Financially distressed

[22] The statutory definition in section 128(1)(f) establishes two tests to be applied within the immediately ensuing six months: a cash-flow or commercial-insolvency inquiry focused on the company's ability to meet its debts and a balance-sheet or factual-insolvency inquiry focused on its likelihood of becoming insolvent. Either commercial inability to pay debts or likely balance-sheet insolvency within six months satisfies the definition.¹ Section 131(4)(a)(i) requires of the court, before granting business rescue, to be satisfied that the company meets this definition.

[23] Determining whether a company is financially distressed is not a formalistic or purely label-based inquiry. It is an objective, evidence-based assessment of the company's actual financial position and immediate future including liquidity, readily realisable assets, existing and prospective liabilities and its ability to continue ordinary trading.² The applicant bears the evidentiary burden and bare allegations will not suffice. What is required is credible, objective evidence of present or imminent inability to meet debts or other indicators of serious financial trouble, which is determined from the company's financial position, cash-flow prospects and surrounding circumstances.³ It is therefore required to consider and assess the supportive

¹ In *Boschpoort Ondernemings (Pty) Ltd v ABSA Bank Ltd* 2014 (2) SA 518 (SCA) paras 21 and 22 the court said that the retention by the legislature, in the context of a winding-up of a solvent company in the new Act, of the deeming provisions as to when a company is unable to pay its debts as contained in s 345 of the 1973 Act is a clear indication of what is meant by an insolvent company in the 2008 Act. However, this dictum clearly refers to the concept of solvency only in respect of winding-up. According to the authors of Henochsberg of the Companies Act 71 of 2008 at pp 460-460(1): "*The situation, in summary, should be that a company that is financially distressed can, as the first leg of the enquiry, be placed under business rescue. This would mean the "defined" commercial insolvency as in para (1) of that definition. If a company appears to be reasonably likely to become insolvent, ie either factually or commercially within the ensuing six months, it is also financially distressed... Therefore, "financially distressed" should be seen as circumstances that could lead to insolvency, factual as well as commercial, as well as a company in liquidation because of factual or commercial insolvency. The second leg of the enquiry would exclude those companies which are terminally ill or chronically ill but not those who are ailing, which, given time, will be rescued and become solvent*". [emphasis added]

² *Masango v DNA Ammoniak Dienste CC* 2021 JDR 2061 (GP) at para 66.

³ *Securo Safety CC v Bayaan Safety World (Pty) Ltd and Others* 2026 JDR 0962 (GJ) at paras 52-54.

factual material in the founding affidavit and objectively determine whether the company is financially distressed. In the absence of such material, the claim of financial distress must fail.

[24] The commercial-insolvency test requires an assessment of the company's current financial position and immediate future to determine whether it can, in the ordinary course, meet all its debts including existing contingent and prospective obligations and continue trading. The focus is on whether the company has liquid or readily realisable assets available to satisfy liabilities as they mature and whether it can remain operational and financially sound thereafter. The key inquiry is not merely whether the company owes money. The question is rather, in the ordinary course, is it reasonably unlikely to pay debts as they fall due during the next six months. Financial distress is thus established where the company is commercially insolvent and unable to pay debts as they fall due.⁴ If the evidence shows that the company cannot meet current demands or day-to-day liabilities, that strongly indicates commercial insolvency and therefore financial distress.

[25] The factual-insolvency test determines whether the company is reasonably likely to become insolvent within six months. The definition is intended for companies approaching factual insolvency within a six-month window as opposed to a company already factually insolvent.⁵ It is not to say that present insolvency is never relevant, however, the statutory inquiry remains specific in terms of section 128(1)(f): a predictive assessment for the next six months. This test extends the concept beyond immediate cash-flow difficulties. A company may still be paying debts for now, but if it is reasonably likely to become balance-sheet insolvent within six months, it is financially distressed for purposes of the definition.

[26] For a section 131 application, the applicant must present sufficient objective evidence to the court to satisfy it that at least one of the tests is met. The governing question is whether the proven facts provide a reasonable basis to conclude that within the immediately ensuing six months the company will likely be unable to meet maturing debts or will likely become balance-sheet insolvent.

⁴ *Ziegler South Africa (Pty) Ltd v South African Express SOC Ltd and Others* 2020 (4) SA 626 (GJ) at para 28.

⁵ In *Nedbank Ltd v Bestvest 153 (Pty) Ltd; Essa and Another v Bestvest 153 (Pty) Ltd and Others* 2012 (5) SA 497 (WCC) the question was raised whether solvent in this context includes factual solvency but it was not necessary to decide the issue - see paras 30-31.

Founding affidavit in respect of financial distress

[27] Mr Shezi, the applicant in the business rescue application, is the executive director, majority shareholder and creditor of Livestock. He is an affected person for purposes of section 131(1) read with section 128(1)(a) of the 2008 Act.

[28] Mr Shezi says that Livestock is financially distressed. In support of this, he provides inter alia the following information:

- (28.1) Mr Shezi invested more than R30 million in Livestock in the form of share capital and a loan.
- (28.2) The capital amount plus accumulated interest in terms of the loan agreement with MIC, approximately R4.2 million as of 31 July 2025, was either already due and payable or would be within the next six months.
- (28.3) Livestock is a growing tech enterprise but it is not financially viable to pay an investor R4.5 million plus interest. Livestock has a current asset in the form of credit advanced to Livestock Wealth Farmers Club (Pty) Ltd. Some of this can be expected to be realised within the next six months, but not enough to pay R4.5 million. It also has a significant asset in the form of a loan to Livestock Wealth Financial Services (Pty) Ltd. This is not as readily realisable, but it could be factored to raise funds.
- (28.4) It is uncertain whether Livestock could raise the necessary funds to replace what was essentially considered equity capital.
- (28.5) In 2024, Mr Shezi advanced as a loan a further R2.1 million to Livestock.
- (28.6) Livestock's financial distress was caused by MIC, but Mr Shezi does not provide detail to reach this conclusion.

[29] In addition, Mr Shezi referred to the financial statements of Livestock for the year ending 29 February 2024. The financial statements reflect the comprehensive loss for 2023 as R3.5 million and, although there has been some improvement in 2024, Livestock was still

trading at a loss of R207 385 for that financial year. The financial statements reflect its liabilities as R26 million. Considering the loans by Mr Shezi and MIC (the total of which should be in excess of R36.6 million) it appears that the liabilities were substantially understated and, if so, that Livestock may well be factually insolvent.

[30] From the founding papers and an assessment of the facts provided by Mr Shezi, it appears to be reasonably unlikely that Livestock will be able to pay all of its debts as they become due and payable within the immediately ensuing six months. As mentioned, it also appears reasonably likely that Livestock will become factually insolvent, to the extent that it is not already, within the immediately ensuing six months. I am accordingly satisfied (and it was not in issue) that on the facts advanced Livestock is indeed financially distressed for purposes of sections 128(1)(f) and 131(4) of the 2008 Act, which opens the door to the second leg of the enquiry and the real question in this application, being whether it has been successfully demonstrated that there is a reasonable prospect of rescuing the company by placing it under the supervision.

Reasonable prospect for rescuing the company

[31] The section 131(4)(a) inquiry regarding a reasonable prospect of rescuing a company is an objective, fact-sensitive threshold question.

[32] The applicant bears the onus and must make out the case in the founding papers according to the rules applicable to motion proceedings.⁶ The court requires a factual foundation or cogent evidential basis showing why rescue is reasonably attainable.⁷ Because the applicant bears the onus in motion proceedings, deficiencies in the founding affidavit are often fatal. The necessary reasonable grounds must appear there and not be left for speculation or supplementation after the fact. Courts are especially sceptical where the applicant does not

⁶ *PFC Properties (Pty) Ltd v Commissioner, South African Revenue Service and Others* 2024 (1) SA 400 (SCA) at para 35 with reference to *Oakdene Square Properties (Pty) Ltd and Others v Farm Bothasfontein (Kyalami) (Pty) Ltd and Others* 2013 (4) SA 539 (SCA) at para 29.

⁷ *Nedbank Ltd v Bestvest 153 (Pty) Ltd; Essa and Another v Bestvest 153 (Pty) Ltd and Others* 2012 (5) SA 497 (WCC) at para 41; *Propspec Investments (Pty) Ltd v Pacific Coast Investments 97 Ltd and Another* 2013 (1) SA 542 (FB) at para 11; *Mintails South Africa (Pty) Ltd v Mintails Mining SA (Pty) Ltd and Others* 2022 (4) SA 238 (GJ) at para 30; *Securo Safety CC v Bayaan Safety World (Pty) Ltd and Others* 2026 JDR 0962 (GJ) at paras 26 and 71.

identify actual financial flows, does not explain creditor exposure, or does not disclose the mechanics of the proposed turnaround in at least broad but concrete terms.

[33] The applicant must demonstrate, on the papers, that one of the statutory gateways in section 131(4)(a) is present and that there is a reasonable prospect of rescuing the company. The phrase “*rescuing the company*” refers to a realistic prospect of achieving one of the recognised business-rescue outcomes,⁸ not merely commencing a process or formulating a plan. Those outcomes are, first, restoring the company to solvent continued existence and, second, if that cannot be achieved, securing a better return for creditors or shareholders than immediate liquidation would yield.⁹

[34] The applicant need not produce a complete and detailed business rescue plan or establish that rescue is more likely than not at the application stage.¹⁰ Nor is the applicant required to prove concrete and fully verified minutiae to the point of demonstrating probability of success, because that would raise the threshold too high and undermine the availability of business rescue.¹¹ However, the absence of a requirement for a full plan does not excuse a lack of substance. The applicant must do more than offer hope, broad optimism, or speculation.¹² The authorities insist on enough detail to show a genuine and objectively supportable route to rescue and one of the statutory outcomes. This must be supported by concrete facts such as the cause of the distress, the proposed remedial steps, the expected source of income or funding, or some other objectively grounded basis for concluding that business rescue can work. Vague statements such as that funding may become available, contracts may revive, or profitability may return, without evidential support, should be rejected.

⁸ *Oakdene Square Properties (Pty) Ltd and Others v Farm Bothasfontein (Kyalami) (Pty) Ltd and Others* 2013 (4) SA 539 (SCA) at paras 26-27.

⁹ Companies Act s 128(1)(b)(iii). *Oakdene Square Properties (Pty) Ltd and Others v Farm Bothasfontein (Kyalami) (Pty) Ltd and Others* 2013 (4) SA 539 (SCA) paras 26-27; *Kgoro Consortium (Pty) Ltd and Another v Cedar Park Properties 39 (Pty) Ltd and Others* 2022 JDR 1108 (SCA) at para 9; *Mintails South Africa (Pty) Ltd v Mintails Mining SA (Pty) Ltd and Others* 2022 (4) SA 238 (GJ) at paras 27-31.

¹⁰ *Oakdene Square Properties (Pty) Ltd and Others v Farm Bothasfontein (Kyalami) (Pty) Ltd and Others* 2013 (4) SA 539 (SCA) at para 31; *Mhlonipheni v Mezepoli Melrose Arch (Pty) Ltd* 2020 JDR 1033 (GJ) at paras 85-86.

¹¹ *Propspec Investments (Pty) Ltd v Pacific Coast Investments 97 Ltd and Another* 2013 (1) SA 542 (FB) at para 11; *Kgoro Consortium (Pty) Ltd and Another v Cedar Park Properties 39 (Pty) Ltd and Others* 2022 JDR 1108 (SCA) at paras 11-12.

¹² *Oakdene Square Properties (Pty) Ltd and Others v Farm Bothasfontein (Kyalami) (Pty) Ltd and Others* 2013 (4) SA 539 (SCA) at para 29; *Kgoro Consortium (Pty) Ltd and Another v Cedar Park Properties 39 (Pty) Ltd and Others* 2022 JDR 1108 (SCA) at para 12.

[35] The reasonable-prospect standard is higher than a mere arguable possibility or mere prima facie case but lower than proof of a reasonable probability.¹³ It must be supported in the founding papers by a cogent factual foundation rather than vague assertions.¹⁴ That factual platform will usually need to address the cause of the company's financial distress and the remedial mechanism by which the distress is said to be capable of being overcome, which include supporting financial or commercial facts demonstrating that the proposal is grounded in reality rather than hope. The emphasis falls on the word reasonable: the prospect must rest on reasonable grounds, not conjecture.¹⁵ The threshold can be formulated as a realistic, fact-based prospect, but not proof that rescue will probably succeed.

[36] A common tension is how much detail is enough. Both extremes must be avoided. On one side, it must not permit rescue applications based on little more than optimism or a desire to obtain the moratorium that accompanies supervision. On the other, it must not demand such exhaustive detail that the applicant effectively has to prove the success of a plan before a practitioner has even taken control. Thus, the applicant must show a realistic pathway, not a guaranteed outcome. Put practically, the court wants to know why rescue could work in this case, what facts support that contention, and how the proposed course addresses the causes of the company's distress.

[37] If there is no such prospect, the application must fail even if broader equitable or social considerations, including concern for employees, weigh in favour of delay or intervention.¹⁶

[38] In summary, for section 131(4)(a), an applicant must prove on the papers that there is an objectively reasonable, fact-based prospect that business rescue will achieve one of the recognised rescue outcomes. That means more than showing that a plan might later be devised, and more than asserting that liquidation should be avoided. The applicant must furnish a factual foundation showing a plausible and commercially grounded route either to solvent continuation

¹³ *Oakdene Square Properties (Pty) Ltd and Others v Farm Bothasfontein (Kyalami) (Pty) Ltd and Others* 2013 (4) SA 539 (SCA) at paras 31.

¹⁴ *Oakdene Square Properties (Pty) Ltd and Others v Farm Bothasfontein (Kyalami) (Pty) Ltd and Others* 2013 (4) SA 539 (SCA) at para 29-30; *African Banking Corporation of Botswana Ltd v Kariba Furniture Manufacturers (Pty) Ltd and Others* 2015 (5) SA 192 (SCA) at para 30.

¹⁵ *Propspec Investments v Pacific Costs Investments 97 Ltd* 2013 (1) SA 542 (FB) at para 11; *Oakdene Square Properties (Pty) Ltd and Others v Farm Bothasfontein (Kyalami) (Pty) Ltd and Others* 2013 (4) SA 539 (SCA) at para 29; *Absa Bank Ltd v Newcity Group (Pty) Ltd and another related matter* [2013] 3 All SA 146 (GSJ) at para 20; *Gouws v Eraki Trading 12 CC and others* 2023 JDR 3112 (GJ) at paras 30-32; *Moabi and Others v Amogelang Logistics CC and Others* 2025 JDR 1011 (GP) at para 9.

¹⁶ *Moabi and Others v Amogelang Logistics CC and Others* 2025 JDR 1011 (GP) at para 48.

or to a better return for creditors or shareholders than immediate liquidation.¹⁷ In practical terms, the applicant succeeds only if the founding affidavit identifies real facts that explain why the company can be rescued and how the proposed intervention addresses its distress. Vague averments, unsubstantiated hopes of funding, or reliance on policy considerations alone will not do. The standard is intentionally moderate: less than probability, but materially more than speculation.

The founding affidavit in respect of reasonable prospect

[39] Against this legal background, the question is whether Mr Shezi has succeeded to prove that there is an objectively reasonable, fact-based prospect that business rescue will achieve one of the recognised rescue outcomes and whether he met the threshold for demonstrating that there is a reasonable prospect of rescuing the financially distressed Livestock.

[40] In his founding affidavit, Mr Shezi states the following in respect of a reasonable prospect of rescuing Livestock.

(40.1) *The purpose of the application is to utilise the process to restructure Livestock's financing structure and to exclude MIC from further participation, while not placing MIC in a worse off position than it would be if Livestock were to be wound up.* Mr Shezi however does not explain how this restructuring will be implemented. He seems willing to provide funding himself but says that he refuses to do so on terms that permit MIC to remain involved in the business. It seems unlikely to me that there is any hope of Mr Shezi advancing additional funds to Livestock. Not only is he clearly unwilling to provide funding to Livestock for the payment of MIC's loan, but it seems improbable that he is in a position to do so. Had he been in such a position, Livestock would not have approached MIC for additional funding. In any event, it seems to me that the only way to comply with his condition, i.e. that MIC must exit, is that MIC must be paid not only in terms of the

¹⁷ *Oakdene Square Properties (Pty) Ltd and Others v Farm Bothasfontein (Kyalami) (Pty) Ltd and Others* 2013 (4) SA 539 (SCA); *Kgoro Consortium (Pty) Ltd and Another v Cedar Park Properties 39 (Pty) Ltd and Others* 2022 JDR 1108 (SCA); *PFC Properties (Pty) Ltd v Commissioner, South African Revenue Service and Others* 2024 (1) SA 400 (SCA).

loan but also for the shares it already holds. Replacing one loan with another does not advance his case for rescuing Livestock from its current financial distress.

- (40.2) *Livestock will also be in a position to realise some of its current assets, generating funds which may be used.* No detail whatsoever is provided in support of this proposition. For instance, what realisable assets are referred to, what are their values and when and how will they be realised.
- (40.3) *Mr Shezi proposes to reach agreement with the business rescue practitioner to purchase Livestock's business as a going concern, rescuing the business if not the company.* The purpose of business rescue proceedings is not to rescue the business of a company but to rescue the company with its business. This raises the further question being once the business is sold, what would be the purpose of business rescue? There is no apparent reason why Mr Shezi will not be able to purchase the business if Livestock is liquidated. This will result in a similar improved dividend to creditors and shareholders as a sale from business rescue.
- (40.4) *Once placed under supervision, the business rescue practitioner can formulate a business rescue plan which can (possibly) facilitate further investment by Mr Shezi and "any other interested investors", allow Livestock to continue trading and growing and facilitate the exit of MIC.* Firstly, no detail regarding "any other investor" or even the probability of finding a willing and able investor – particularly in the current circumstances of Livestock – is dealt with. Secondly, merely leaving the plan for rescuing the company in the hands of the business rescue practitioner is simply not sufficient.¹⁸

[41] From the legal exposition above, it is clear that, for Mr Shezi to succeed with his application, he must prove on the papers that there is an objectively reasonable, fact-based prospect that business rescue will achieve one of the recognised rescue outcomes. There is no

¹⁸ *Oakdene Square Properties (Pty) Ltd and Others v Farm Bothasfontein (Kyalami) (Pty) Ltd and Others* 2013 (4) SA 539 (SCA) at para 22; *Kgoro Consortium (Pty) Ltd and Another v Cedar Park Properties 39 (Pty) Ltd and Others* 2022 JDR 1108 (SCA) at paras 11-12.

factual foundation showing a plausible and commercially grounded route either to solvent continuation or to a better return for creditors or shareholders than immediate liquidation.¹⁹

[42] Mr Shezi relies solely thereon that a business rescue practitioner will devise a plan. A recurring theme in the prominent authorities is that an applicant cannot satisfy the section merely by showing a reasonable prospect that a practitioner might later devise a plan.²⁰ The prospect must relate to the statutory end-state itself, not just to the process leading up to it.²¹ Importantly, such an approach prevents business rescue from being used simply as a postponement mechanism while the company remains without a realistic path to rehabilitation or improved realisation for stakeholders.

[43] Mr Shezi fails to identify real facts that explain how Livestock can be rescued or even how his proposed intervention addresses Livestock's distress. His vague averments and unsubstantiated hopes of funding are insufficient.

[44] Having considered the founding papers and argument on behalf of Mr Shezi, I am not persuaded that Mr Shezi has discharged the onus on him regarding a reasonable prospect of rescuing Livestock. There is no factual foundation or cogent evidential basis showing why rescue is reasonably attainable. The averments in the founding affidavit largely constitutes speculation and do not disclose the mechanics of rescuing Livestock. No realistic route to one of the business rescue outcomes is proposed. Mr Shezi does not offer more than mere chance and broad optimism. Instead, the founding affidavit consists of vague statements such as that funding may become available and profitability may return, without evidential support.

[45] There is no cogent factual substance to address the remedial mechanism by which the financial distress is capable of being overcome. There are no supporting financial or commercial documents or facts demonstrating that the proposal is grounded in reality rather than hope. Although it is not required of Mr Shezi to present a detailed business rescue plan, he fails to explain why rescue could work in this case, what facts support that contention, and

¹⁹ *Oakdene Square Properties (Pty) Ltd and Others v Farm Bothasfontein (Kyalami) (Pty) Ltd and Others* 2013 (4) SA 539 (SCA); *Kgoro Consortium (Pty) Ltd and Another v Cedar Park Properties 39 (Pty) Ltd and Others* 2022 JDR 1108 (SCA); *PFC Properties (Pty) Ltd v Commissioner, South African Revenue Service and Others* 2024 (1) SA 400 (SCA).

²⁰ *Oakdene Square Properties (Pty) Ltd and Others v Farm Bothasfontein (Kyalami) (Pty) Ltd and Others* 2013 (4) SA 539 (SCA) at para 31.

²¹ *Kgoro Consortium (Pty) Ltd and Another v Cedar Park Properties 39 (Pty) Ltd and Others* 2022 JDR 1108 (SCA).

how the proposed course addresses the causes of Livestock's distress. Considering that he was at all relevant times the sole director and shareholder of Livestock, more detail was expected of him, which he simply did not provide.

[46] Accordingly, I am not satisfied that Mr Shezi has discharged the onus on him to prove that there is a reasonable prospect of rescuing Livestock. The business rescue application must therefore fail.

The liquidation application

[47] Some of the background facts relevant to the liquidation application have already been referred to above but are repeated here for context.

[48] MIC's case is that it loaned R3 million to Livestock in terms of the loan agreement. It contends that Livestock breached the loan agreement in that it inter alia failed to provide financial records and other information it was obliged to provide to MIC in terms of clause 10.3 thereof. Due to the growing concern of Livestock's persistent failure to provide financial records during 2023, MIC engaged the services of Enterprise, a business management consultancy company specialising in business transformation and financial management, to provide assistance to Livestock. Livestock however failed to provide updated financial statements or a credible business plan capable of restoring solvency. Despite requests for information, Livestock failed to provide the required documentation.

[49] This prompted MIC to afford Livestock an opportunity to remedy its breach. On 12 December 2023, MIC sent a letter of demand to Livestock, which outlined Livestock's breach of the loan agreement. Livestock was afforded until 5 February 2024 to remedy the breach, but it failed to do so. Instead, Livestock requested a further loan of R6.8 million to address cash flow issues and overdue debts. Mr Shezi says that Livestock sought the funds to secure more contracts from buyers at risk of default and to maintain or enhance Livestock's reputation and goodwill, not to settle any debts. MIC on the other hand contended that this request was an admission of financial distress that entitled it to demand immediate redemption of the convertible loan.

[50] MIC demanded repayment from Livestock on 24 June 2024. This followed ongoing concerns about its precarious finances and lack of solid financial records. MIC invoked its

acceleration rights under clause 12.7 of the loan agreement and demanded immediate repayment of all outstanding capital and interest.

[51] Livestock refused, claiming the loan was a shareholder loan. On 31 July 2024, MIC served a statutory demand in terms of section 345(1)(a) of the 1973 Act on Livestock. On 20 August 2024, Livestock's attorneys denied any default under the agreement and rejected liability to MIC. They characterised the statutory demand as an act in terrorem and an abuse of process and claimed that Livestock had the financial means to meet its obligations.

[52] MIC argues Livestock has consistently failed to pay its debts despite repeated demands reminders and formal statutory notice. Its claims of solvency are unsupported by evidence and contradicted by its failure to fulfil legal obligations. Therefore MIC believes these facts justify relying on the statutory presumption of insolvency, the acceleration clause and the current application for a winding-up order.

[53] In response Livestock contends that there is a dispute between the parties regarding MIC's entitlement to accelerate and demand payment. As a consequence, so it is contended, the alternative dispute resolution provisions of the loan agreement were triggered which prohibits MIC from approaching the court with this liquidation application.

[54] Livestock further contends that MIC's attempt to convert its claim into a claim for early repayment is based on spurious and disputed grounds which would be inappropriate for the court to adjudicate in liquidation proceedings. This, Livestock contends, is particularly concerning given that MIC has disregarded the dispute resolution clause, which provides that any dispute regarding the extent and timing of Livestock's obligation to pay MIC must be resolved, in the final instance, through arbitration. MIC contends Livestock's reliance on the dispute resolution clause is invalid as there is no genuine dispute.

[55] What is to be determined in this case is whether Livestock is disputing the amount claimed by MIC on bona fide and reasonable grounds.²² Livestock says it does. What is

²² *Badenhorst v Northern Construction Enterprises (Pty) Ltd* 1956 (2) SA 347 (T); *Kalil v Decotex (Pty) Ltd and Another* 1988 (1) SA 943 (A).

however not disputed between the parties is the existence of the loan agreement, the material terms thereof and MIC's advance of R3 million on 31 August 2022.

[56] It is common cause that MIC and Livestock concluded the loan agreement on 28 July 2022 in terms of which MIC advanced the loan to Livestock. The loan (capital and interest) would become repayable by 1 August 2025. Livestock argues that the true nature of the agreement is not that of a loan and as such disputes that the loan would have become repayable on the relevant maturity date. Despite this argument, Livestock acknowledges the terms of the loan agreement. The loan agreement expressly sets out the parties' respective rights and obligations, including the repayment terms, reporting requirements, and mechanisms for acceleration of the loan. Relevant for present purposes are the following terms:

- (56.1) In terms of clause 4.1 MIC agreed to lend to Livestock the Loan Capital Amount, i.e. R3 million, with effect from the Advance Date, i.e. 1 August 2022, upon the terms and conditions set out in the loan agreement. It is common cause between the parties that the loan amount was advanced.
- (56.2) In terms of clause 5 the Loan would bear interest at the prime rate plus 2% for the period from the Advance Date to the Repayment Date and would be compounded annually.
- (56.3) In terms of clause 6, subject to clause 11, the loan would only become due and payable on the Maturity Date, i.e. 36 months after the Advance Date. The Loan Capital Outstanding on the Maturity Date would be settled in cash by Livestock into a bank account nominated by MIC *or* converted into Conversion Shares on the terms set out in clause 7.
- (56.4) In terms of clause 7 MIC would be entitled, on the Maturity Date, to convert all or any part of the Loan Capital Outstanding into Conversion Shares as provided for in the said clause.

[57] Although the loan agreement provides for the conversion of the loan to shares, it is clearly an option afforded to MIC. MIC thus had an election to convert the loan to shares on the maturity date. Should MIC not exercise the election to convert, the loan would become

payable, together with accrued interest. The loan was accordingly made with effectively an interest holiday of three years after which the loan with interest would be repayable unless MIC elected to convert the loan to shares. Before the maturity date MIC would not be entitled to repayment of the capital or interest, that is unless Livestock committed an act of default in terms of clause 12 of the agreement. In that case, MIC would be entitled to accelerate payment before the maturity date.

[58] MIC has made out a prima facie case for liquidation in its founding papers. It demonstrated a loan agreement in terms of which it advanced the loan and relies on a breach by Livestock to have accelerated repayment of the loan. MIC afforded Livestock an opportunity to remedy the breach and, after Livestock failed to do so, demanded payment of the loan in terms of section 345(1)(a) of the 1973 Act. Relying on Livestock's failure to make payment pursuant to the demand, MIC brought the liquidation application.

[59] I turn to address the point in limine raised by Livestock.

The alternative dispute resolution clause

[60] The point in limine is premised thereon that MIC's claim is a claim in terms of the loan agreement and, accordingly, that the dispute resolution clause, clause 14, in the loan agreement finds application. In terms of clause 14

“14.1 The Parties shall use their best efforts and in good faith seek to resolve amicably all disputes and differences arising between them out of or in connection with the agreement or its interpretation or its implementation. Should the dispute not be capable of settlement on the aforementioned basis, the matter shall be escalated to more senior representatives of both Parties, who shall attempt to resolve the dispute by negotiation.

14.2. If the Parties are unable to resolve any such dispute or difference within a period of 7 (seven) days or such period as the Parties may subsequently agree, the Parties shall refer the dispute or difference to a neutral mediator...”

“14.3.1. If the Parties do not accept the recommendation of the mediator, the Parties or either of them shall within 7 (seven) days of the mediator's recommendations refer the dispute or difference to arbitration...

14.3.2. Nothing in this clause shall preclude any Party from seeking interlocutory relief in any court having jurisdiction pending the institution of appropriate proceedings for the enforcement of any rights under this agreement.”

[61] Livestock contends that a dispute is apparent from the founding papers concerning whether MIC breached the loan agreement and, if so, whether it was entitled to claim accelerated payment of the loan. Livestock further contends that the liquidation application constitutes a breach of the loan agreement and an abuse of process. It contends that the breach is inconsistent with the circumstances in which a winding-up application may be brought by virtue of the *Badenhorst* principle and should be dismissed, alternatively stayed pending the dispute resolution process. MIC's breach, according to Livestock, is therefore its failure to refer the dispute to alternative dispute resolution and instead to launch the liquidation application. This contention is not persuasive. The dispute which Livestock says had to be referred is MIC's breach of not referring the dispute. Logically, there was therefore no dispute for referral. The argument does not make any sense.

[62] When asked for clarity during argument what the dispute is that had to be referred, Ms Meyer (who appeared for Livestock) said that it is the question whether MIC was entitled to accelerate the repayment of the loan. However, this is not formulated clearly as such in Livestock's answering affidavit. MIC argues that Livestock's reliance on the arbitration clause is misplaced because there is no genuine dispute and Livestock defaults are factual and undisputed.

[63] If the alleged dispute is whether MIC was entitled to accelerate payment, the question arising concerns the circumstances which gave rise to the acceleration. According to MIC, this is because of Livestock's continuing breach of inter alia clause 10.3 of the loan agreement.

[64] It is common cause on the papers that no dispute was referred to alternative dispute resolution, despite Livestock's expressed wish in the answering affidavit (deposed to in February 2025) to do so. Livestock does not explain why it has not referred the alleged dispute to mediation or arbitration. That is not consistent with a party that verily believes that an arbitral dispute exists. In any event, and irrespective what exactly the dispute is that had to be referred, clause 14 provides for time limits within which such a referral had to take place. As mentioned, it is common cause that this was not done by either party.

[65] A dispute resolution clause does not by itself prevent a party from applying to wind up the other contracting party, although the court may in some cases stay or refuse the liquidation application where the underlying debt is genuinely disputed or pending arbitration may resolve

the dispute.²³ In this matter there is no such pending proceeding. Arbitration proceedings and liquidation proceedings serve separate purposes.²⁴ A dispute resolution clause is aimed at resolving disputes between the parties under their agreement, whereas winding-up proceedings engage the court's insolvency jurisdiction and have consequences extending beyond the immediate parties.²⁵

[66] Liquidation is treated as a collective insolvency remedy besought through the court, not merely a bilateral process to enforce payment of a contractual debt. A liquidation application invokes the court's insolvency jurisdiction and affects the company's entire body of creditors and stakeholders. That collective and public dimension means the remedy is qualitatively different from arbitration or mediation of a private contractual dispute.²⁶ Where arbitration ordinarily determines rights and obligations between parties under the contract, liquidation determines whether a company should be wound up under insolvency principles. A liquidation application falls outside the ordinary scope of an arbitration referral.²⁷

[67] For the aforesaid reasons, dispute resolution clauses do not automatically oust the court's jurisdiction to entertain a winding-up application, and a claim for liquidation is not treated as an arbitrable claim. The court may therefore stay or refuse a winding-up application where the debt is disputed on bona fide and reasonable grounds, where arbitration may dispose of the parties' underlying contractual dispute, or where the liquidation application appears to be an abuse of process rather than a genuine invocation of insolvency law. Accordingly, a dispute resolution clause does not, without more, bar liquidation, albeit that it may affect timing, procedure, and the court's discretionary response.

[68] As such, in an event such as this, where the respondent raises a dispute to an applicant's claim, it is not simply a case of staying or dismissing the application merely because the parties agreed on an alternative dispute resolution process. Instead, the court is still required to assess

²³ *Freshvest Investments (Proprietary) Limited v Marabeng (Proprietary) Limited* 2016 JDR 2216 (SCA) at para 15; *Grenco Projects and Construction CC v Hermanus Esplanade Dev Co (Pty) Ltd* 2024 (6) SA 500 (WCC) at para 103.

²⁴ *Linquenda Aqua (Pty) Ltd v Winelands Bottling Company (Pty) Ltd* 2024 JDR 2833 (WCC) at para 33.

²⁵ *Naidoo v Absa Bank Ltd* 2010 (4) SA 597 (SCA) at para 4; *Investec Bank Ltd and Another v Mutemeri and Another* 2010 (1) SA 265 (GSJ) at para 31; *Electrolux South Africa (Pty) Ltd v Rentek Consulting (Pty) Ltd* 2023 (6) SA 452 (WCC) at para 15.

²⁶ *Electrolux South Africa (Pty) Ltd v Rentek Consulting (Pty) Ltd* 2023 (6) SA 452 (WCC) at para 15.

²⁷ *Khewija Engineering and Construction Proprietary Limited v Van Den Steen NO and another* 2023 JDR 2399 (GJ) at para 27.

the dispute raised and determine whether the claim is disputed on bona fide and reasonable grounds. For this reason, the point in limine is not determinative of the matter.

The merits

[69] The *Badenhorst*²⁸ principle provides that where prima facie indebtedness exists, the onus is on the respondent to show that the indebtedness is bona fide disputed on reasonable grounds. I am satisfied that MIC asserts a prima facie claim against Livestock in the founding papers. The question then arises whether Livestock disputes the claim on bona fide and reasonable grounds.

The nature of the loan agreement

[70] Livestock contends that, despite the wording of the loan agreement, it is in fact only a simulated loan and the true nature of the right is in fact a preference share. This dispute significantly differs from its earlier expressed commitment to be bound by the terms of the loan agreement.

[71] Livestock argues that, unlike a typical loan, it is expressly barred from repaying the amount or any interest thereon unless and until the date the loan matures and MIC elects to be repaid rather than be issued with ordinary shares. MIC is similarly barred from claiming early payment of the loan unless an event of default is continuing, in which case MIC can invoke acceleration.

[72] Livestock contends that it is apparent from clause 7 (read with clause 6) of the loan agreement that it is not contemplated that the loan will actually need to be repaid on maturity but that MIC “will” instead convert any outstanding part of the loan capital into ordinary shares. In substance, so Livestock contends, MIC is the holder of a preference class share interest, which is in effect redeemable on the maturity date. To the extent not redeemed, the shares are convertible into ordinary shares by MIC in terms of a process set out in clause 7. This is the reason, so Livestock contends, why MIC’s claim is unsecured – MIC is “*in effect an equity investor in the Respondent and not a credit provider.*” Livestock therefore contends that the

²⁸ *Badenhorst v Northern Construction Enterprises (Pty) Ltd* 1956 (2) SA 347 (T).

default position is that the loan would be automatically converted into shares on the maturity date irrespective the circumstances.

[73] I do not agree with the convoluted meaning Livestock seeks to attribute to the loan agreement. Upon a simple reading of clauses 4, 6 and 7 of the loan agreement it is clear that the nature of the loan agreement is exactly that, a loan agreement. In terms of clause 4:

“4.1 The Lender agrees to lend to the Borrower who agrees to borrow the Loan Capital Amount with effect from the Advance Date upon the terms and conditions set out in this Agreement.

4.2. The Loan Capital Amount will be advanced by the Lender directly to the Borrower on the Advance Date by paying the Loan Capital Amount into the bank account of the Borrower, details of which are as follows...”

[74] In terms of clause 6:

“Subject to clause 11 below, the Loan shall only become due and payable on the Maturity Date. The Parties hereby agree that the Loan Capital Outstanding on the Maturity Date shall be settled in cash by the Borrower into a bank account nominated by the Lender or converted into Conversion Shares on the terms set out in clause 7 below.”

[75] MIC were afforded certain rights in terms of clause 11, which included the right to attend meetings of Livestock and to appoint a representative on its board. It is common cause that MIC did not exercise these rights. However, that does not mean, as Livestock seems to suggest, that the loan would not be redeemable on the maturity date or, in the event of a continuing default, once accelerated in terms of clause 12.7.

[76] In terms of clause 7:

“7.1. On the Maturity Date, the Lender shall be entitled to convert all or any part of the Loan Capital Outstanding into Conversion Shares.

7.2. In addition to clause 7.1 above, the Loan Capital Outstanding will automatically convert into Conversion Shares upon a third-party funding round being concluded that is in excess of a pre-money valuation of R30 000 000.00 (thirty million rand) in respect of the Borrower.”

[77] It is common cause that MIC did not elect to convert the loan capital outstanding or any part of it into shares as it was entitled to do in terms of clause 7.1. The loan would only be automatically converted into shares on the maturity in the event of a third-party funding round of sufficient value. It is also common cause that the third-party funding provided for in clause

7.2 did not occur. In fact, MIC elected to accelerate the repayment of the loan even before the maturity date occurred.

[78] The agreement is in substance and form a loan agreement. MIC lent Livestock money which it was expected to repay on the maturity date unless MIC elected to convert it into shares or an event of default occurred. MIC's case is that a default event occurred prior to the maturity date and accordingly it was entitled to accelerate repayment of the loan.

Was there a default event?

[79] MIC contends that Livestock breached clause 10.3 of the loan agreement in that it failed to provide MIC with monthly management accounts, monthly statements on all bank accounts, monthly reporting on key metrics, monthly reporting on institutional investor pipeline developments, quarterly reporting on unaudited financial results with budget versus actual reconciliation and a budget and business plan update. MIC addressed a letter to Livestock on 12 December 2023 in which the failure was recorded and Livestock was afforded an opportunity to remedy the breach on or before 5 February 2024. This is in excess of the 30 days provided for in clause 12.2. MIC contends that Livestock has failed to remedy the breach and there is no evidence advanced by Livestock to the contrary.

[80] In the absence of annual financial statements, MIC further relies on the Enterprise report in support of its contention that Livestock is factually insolvent. Accepting Enterprise's report to be correct in this regard, again in the absence of financial statements being provided as part of the answering affidavit, this constitutes a further default event in terms of clause 12.5.1.5 of the loan agreement. Following upon Livestock's request for further funding from MIC on 5 February 2024, MIC caused further correspondence to be addressed to Livestock on 15 February 2024 in which was confirmed that Livestock failed to comply with the demand made on 12 December 2023. MIC expressed its concern regarding Livestock's repeated failure to comply with the requests for information regarding its financial standing and management, which was exacerbated by its request for further funding, its inability to collect approximately R26 million from farmers, the FSCA press release, lack of new investors and anxious investors calling for returns on their investments. With reference to the 2008 Act, MIC expressed its concern that Livestock may be financially distressed. MIC made it clear that it intended calling for the accelerated repayment of the loan and seeking the winding-up of Livestock.

[81] Livestock replied on 21 February 2024 in which it inter alia undertook to provide MIC with the financial information that would reflect Livestock's current financial status and ability to meet its debts within 30 days. However, the information was not provided to MIC. MIC accordingly terminated the services of Enterprise and provided Livestock with its report on 15 May 2024. MIC again urged Livestock to finalise the financial records. Despite this, no financial statements or records were provided to MIC and notably none were attached to the answering affidavit.

[82] There is a further default event. Clause 12.5.1.2 of the loan agreement provides that if Livestock admits an inability to pay its debts as they fall due, it will constitute a default event. MIC relies on Livestock's letter of 5 February 2024 as support for its contention that Livestock admitted its inability to pay its debts. In the letter Livestock said that its request for MIC to advance a further loan of R6.8 million would enable it "*to pay out overdue investor returns while we collect from the farmers*". Livestock argues that it was never liable for payment to investors but that it was merely an intermediary between the investors and farmers. It contends that it merely facilitates payment – as agent, not as principal – from farmers to the purchasers (investors) and, as such, Livestock does not owe any money to the investors.

[83] The terms of the agreements between the various parties involved in Livestock's business were not placed before me. One would have expected Livestock to do so to discount MIC's argument. When asked about the terms of the agreements, Ms Meyer referred me to the report by Enterprise which contained some of the terms. In its report, Enterprise reported that the only agreement in place with the investors are the terms and conditions found on the platform applicable to users. However, investors are unable to search for or have sight of any actual agricultural assets made available on the website by farmers, who were not users on the platform or able to upload any photos of their assets for sale. Engagement between investors and farmers is not possible via the website and farmer profiles do not explain what farmer services are available. Significantly, there are no contracts between investors and farmers according to Enterprise. Livestock did not contradict this by disclosing any such agreement and accordingly I must accept that this is correct. In those circumstances, it is indeed likely that Livestock had obligations towards investors and that the overdue investor returns referred to in its letter of 5 February 2024 were indeed its liability, which, on its own account, it was unable to pay. Livestock's unsubstantiated denial of liability despite the express contents of its letter is unpersuasive.

[84] Accepting therefore the overdue indebtedness to investors, it follows that Livestock also suspended making payment of its debts or at least announced an intention to do so for purposes of clause 12.5.1.3 of the loan agreement, which constitutes a further default event.

[85] Livestock has not provided the supporting primary evidence MIC requested to support its denials. Consequently, there is no arbitrable dispute in respect of Livestock's breach of the loan agreement since the facts in the founding affidavit remain unchallenged on reasonable and bona fide grounds. It will serve no purpose to allow the matter to be referred to arbitration for an arbitrator to determine whether or not there is an arbitral dispute. There is in my view no such dispute and, similarly there is no dispute on bona fide and reasonable grounds raised to the relief sought in this application.

[86] In terms of clause 12.7:

“12.7. Acceleration

If an Event of Default is continuing, the Lender may, by notice to the Borrower and without prejudice to any other rights or remedies which the Lender may have under the Agreement or at law:

12.7.1. declare that all or part of any Loan Capital Outstanding²⁹ is:

12.7.1.1. immediately due and payable; and/or

12.7.1.2. payable on demand by the Lender; and/or

12.7.2. claim immediate payment of all or part of any loan capital outstanding.”

[87] MIC accelerated payment and demanded immediate payment of the full outstanding amount on 24 June 2024. MIC did so on the basis of the default events provided for in clause 12 of the loan agreement. In this regard MIC relied inter alia on Livestock's failure to provide the financial documents and information and Livestock's correspondence of 5 February 2024 in which it requested a cash injection of R6.8 million to pay overdue investors and its inability to collect overdue debts from farmers to the extent of R26 million. MIC further relied on Livestock's advice that anxious investors are calling for returns and are demanding early

²⁹ Loan Capital Outstanding is defined in clause 1.6.19 as “as at any point in time, the portion of the Loan Capital Amount which has been advanced by the Lender under the Loan plus the accrued interest” and Loan Capital Amount is defined in clause 1.6.18 as “the capital amount to be lent and advanced by the Lender to the Borrower under the Loan, being an amount of R3 000 000.00”.

redemption of their investments and Livestock's inability to adhere to generally accepted accounting standards. As such, MIC claimed, Livestock was deemed to be unable to pay its debts as they fall due, admitted an inability to pay its debts as they fall due, suspended making payments of its debts or announced an intention to do so and, by reason of actual or anticipated financial difficulties, it began negotiations with a creditor for the rescheduling of its indebtedness. I am satisfied that there was a continuing default by Livestock for purposes of clause 12.7 and that MIC was accordingly entitled to accelerate repayment of the loan.

[88] In a further attempt to raise a dispute to the relief, Livestock claims that MIC was not entitled to accelerate payment in terms of clause 12.7 before complying with clause 12.8.

[89] In terms of clause 12.8:

“12.8. Notification of Default

12.8.1. The Borrower [Livestock] must notify the Lender [MIC] of any Default (and, if capable of remedy, the steps, if any, being or proposed to be taken to remedy it) promptly upon becoming aware of its occurrence.

12.8.2. Promptly on request by the Lender, if the Lender believes that a Default may be continuing, the Borrower must supply to the Lender a certificate, signed by one of its authorised signatories on its behalf, certifying that no Default is continuing or, if a Default is continuing, specifying the Default and the steps, if any, being or proposed to be taken to remedy it.”

[90] I do not agree that compliance with clause 12.8 is a prerequisite for acceleration in terms of clause 12.7. MIC had no obligations in terms of clause 12.8.1 as is evident from its formulation. Livestock however failed to comply with clause 12.8.1, which explicitly required of Livestock to inform MIC of any defaults as soon as it became aware of them. Despite being alerted to numerous defaults, Livestock either failed to follow the required process or neglected to do so. In compliance with clause 12.8.2, MIC communicated to Livestock in its correspondence of 12 December 2023, 15 February 2024 and 15 May 2024 Livestock's default of its obligations in terms of the loan agreement and required of Livestock to remedy the default. This automatically triggered Livestock's obligation under clause 12.8.2 of the loan agreement, which required of Livestock to provide a certificate signed by Mr Shezi certifying that no default is ongoing. Livestock failed to do so. Instead, it appears that Livestock misunderstood the onus to rectify the ongoing breach and the notification obligations specified in the same clause. Consequently, Livestock's failure to meet its obligations should not prevent MIC from exercising its right to accelerate payment. As such, even if Livestock is correct and

that compliance with clause 12.8 was a prerequisite for acceleration in terms of clause 12.7, MIC complied. Livestock however did not remedy the default events despite being alerted thereto and despite its undertakings to do so.

[91] None of the default events relied upon by MIC is disputed by Livestock on bona fide and reasonable grounds. No concrete evidence is advanced to gainsay any of the events. Instead, the answering affidavit is replete with allegations that Livestock's woes are attributable to all and sundry but for itself.

Is Livestock commercially insolvent?

[92] Livestock denies in answer to the liquidation application that it is commercially insolvent. It contends that, although it is "*potentially indebted*" to MIC in the amount of R3 million plus interest, it is not unable to pay its debts. However, Livestock has not provided concrete evidence to support its contention. Livestock did not provide any financial statements in its answering affidavit or any other documentary evidence which may support its allegation of commercial solvency. As mentioned, Livestock did provide financial statements as part of its business rescue application. In respect thereof, Mr Shezi said that the conclusion to be drawn from the financial statements is that Livestock is financially distressed.

[93] Mr Shezi managed to make out a compelling case in the business rescue application that Livestock is financially distressed. Livestock's contention that it is able to pay its debts stands in stark contrast with Mr Shezi's affidavit in the business rescue application where he enthusiastically made out a case for financial distress. Mr Shezi (the sole director and shareholder of Livestock), who is the deponent of both the answering affidavit in the liquidation application and the founding affidavit in the business rescue application,³⁰ emphatically confirmed in the business rescue application that Livestock is financially distressed. This directly contradicts Livestock's denial of commercial insolvency.

[94] There is also the deeming provision of section 345(1)(a) of the 1973 Act. In terms thereof, MIC demanded payment of the loan, which became due and payable after it was accelerated, and Livestock neglected to pay the sum, or to secure or compound for it to the

³⁰ Albeit that his first name is spelled differently.

reasonable satisfaction of MIC. In addition, I am satisfied that it is proven that Livestock is unable to pay its debts for purposes of section 345(1)(c) of the 1973 Act.

[95] Apart from raising the argument that MIC was not entitled to accelerate payment, Livestock does not deny being indebted to MIC for the loan capital and interest. Considering this and the fact that Livestock has to date made no attempts to pay the debt owing to MIC, its contention that it is able to pay its debts is unpersuasive. The best proof of solvency is payment.³¹

[96] Based on these facts, MIC's case for commercial insolvency is not displaced by the answering affidavit. There is clearly no bona fide dispute on reasonable grounds of the indebtedness or Livestock's inability to pay its debts.³² The undisputed facts demonstrate that livestock cannot meet current demands and remain profitable.³³ This position is supported by Mr Shezi's business rescue application in which he insists that Livestock is financially distressed.

[97] The disputes raised by Livestock are peripheral to and do not address its commercial insolvency.

[98] I am therefore satisfied that MIC has successfully demonstrated that there is a valid debt, which is due and payable, that the debt remains unsatisfied and that Livestock is unable to pay the debt. Livestock is undoubtedly commercially insolvent. I am also satisfied that MIC has otherwise complied with the provisions of the 1973 Act to entitle it to an order as prayed for in its notice of motion. In my judgment it is justified in the circumstances that a winding-up order should follow.

The relief

[99] MIC seeks a final order of liquidation. Despite this, the court retains the discretion to grant a provisional order even if a final order is prayed for.³⁴ The test for a final order is

³¹ *De Waard v Andrew and Thienhaus Ltd* (1907) TS 727 at 733.

³² *Absa Bank Ltd v Rhebokskloof (Pty) Ltd and Others* 1993 (4) SA 436 (C) at 440 F-H; *Kalil v Decotex* 1988 (1) SA 943 (A) at 980.

³³ *Murray NO and Others v African Global Holdings (Pty) Ltd and Others* 2020 (2) SA 93 (SCA) at par 31.

³⁴ *Johnson v Hirotec (Pty) Ltd* 2000 (4) SA 930 (SCA) at para 9.

different to that of a provisional order³⁵ in that the applicant must establish its case on a balance of probabilities.³⁶ Having considered the affidavits and argument on behalf of the parties, I am satisfied that MIC has discharged this onus for the reasons aforementioned. Considering the circumstances of this matter and particularly the common cause facts and the absence of a bona fide dispute on reasonable grounds, there seems to be no reason or practical purpose for granting interim relief. Livestock opposed the relief and fully pleaded its case in opposition thereof. It does not convincingly suggest that all the issues have not been fully ventilated or that there is a likelihood that further relevant evidence would be forthcoming.

[100] I am therefore satisfied that a case is made out for a final liquidation order.

Order

[101] The following order is made:

(101.1) In the business rescue application under case no: 2025-222413:

(101.1.1) The business rescue application is dismissed with costs;

(101.2) In the liquidation application under case no: 2024-129396:

(101.2.1) The respondent is placed under winding-up in the hands of the Master of the High Court of South Africa, Gauteng Division, Johannesburg;

(101.2.2) The costs of this application are costs in the winding-up of the respondent.

³⁵ For a provisional winding-up order the applicant must establish its entitlement to an order on a *prima facie* basis, i.e. that the applicant must show that the balance of probabilities on the affidavits is in its favour. See *Orestisolve (Pty) Ltd t/a Essa Investments v NDFT Investment Holdings (Pty) Ltd and another* 2015 (4) SA 449 (WCC) at para [7], with reference to *Kalil v Decotex (Pty) Ltd and another* 1988 (1) SA 943 (A) at 975J-979F.

³⁶ Where the facts are disputed, the court is not permitted to determine the balance of probabilities on the affidavits but must instead apply the rule in *Plascon Evans Paints (Tvl) Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634E-635C; See *Orestisolve* at para [9] and *Budge and Others NNO v Midnight Storm Investments 256 (Pty) Ltd and Another* 2012 (2) SA 28 (GSJ) at para 14.




JF PRETORIUS
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

DATE OF HEARING: 28 January 2026

DATE OF JUDGMENT: 8 May 2026

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