IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL DIVISION, PIETERMARITZBURG

CASE NUMBER: 914/25P

In the matter between:

FIRSTRAND BANK LIMITED **APPLICANT**

Versus

LAMOUR INDUSTRIES PROPRIETARY LIMITED **RESPONDENT**

JUDGMENT

P C BEZUIDENHOUT J:

[1] At the commencement of the hearing an application for condonation of the late filing of heads of argument was handed in and heads of argument on behalf of Respondent. It was not opposed by Applicant and the matter proceeded.

[2] Applicant is seeking an order for the provisional liquidation of Respondent. It is opposed by Respondent.

[3] The basis for the application is that Applicant alleges that Respondent is unable to pay its debt in terms of section 334(1) read with 345(1)(c) of the Companies Act 1973 read with Schedule III and item 9 of Schedule IV of the 2008 Companies Act. It contends that Respondent owes R16 530 042.12 plus interest and costs.

[4] There is a signed master agreement that was entered into on 10 January 2023 for the sale agreement with WesBank in respect of the purchase of certain goods. In terms thereof Applicant remained owner of the goods until the full purchase price had been paid.

[5] On 25 March 2024 an instalment sale agreement was entered into incorporating the terms of the master sales agreement and certain industrial equipment were sold to Respondent for the price of R15 724 507.66. In terms of the sale agreement various payments had to be made and the instalments sale agreement would have expired on 20 March 2029.

[6] Respondent defaulted and did not make any monthly payments.

[7] On 3 July 2024 Applicant advised Respondent that it was in arrears in the sum of R5 630 846.13 and that the agreement was being cancelled. A written settlement agreement was then entered into between various parties including Respondent on 30 August 2024, regulating the amount that has to be repaid.

[8] In the said settlement agreement Respondent acknowledged its indebtedness to Applicant in the sum of R16 115 475.75 plus interest and costs. It agreed to pay the said amount before 7 February 2025 and to provide a guarantee for such payment by 31 October 2024. If it breached any of the terms then the full amount will immediately become payable.

[9] Respondent breached the settlement agreement by failing to provide a guarantee by 30 November 2024. The debt was also not paid by 7 October 2024. Demand for payment was made by letter on 9 December 2024 but still no payment was received.

[10] It was submitted that as a result of this conduct Respondent was unable to pay its debt and that it could not even pay the arrears. Applicant held no security and it was therefore contended that the requirements of the Companies Act had been complied with in that Respondent was a creditor who was unable to pay its debt and accordingly could to be liquidated.

[11] Respondent, in its answering affidavit, first challenged the authority of the deponent to Applicant's founding affidavit. There is no substance in this submission as it is not the deponent to an affidavit that needs to have the necessary authority but the institution of proceedings must be authorised. See Ganes & Another v Telecom Namibia 2004 (3) SA 615 (SCA). There were further various allegations of copying and posting which were all without basis and without real substance.

[12] Respondent submitted that the affidavit of the deponent to Applicant's affidavit contained hearsay. The deponent clearly set out that she had the documents relating to this case, that she had perused them, that she acquainted herself and at a certain stage was directly involved and so by perusing all the documents and having access thereto she indeed has the necessary knowledge.

[13] It was further submitted that Applicant was not entitled to use liquidation proceedings to force payment. It was also contended that Respondent had 58 employees who were not served. It was admitted that there was no trade union. However it appears from the papers that the notice of motion and all the necessary documents

were indeed posted on the notice board at Respondent's premises. It was therefore done correctly in terms of the Companies Act in respect of notice to the employees.

[14] It was further contended that there was no agreement as the settlement agreement was never signed by Applicant. It was signed by Respondent's representative. However in the replying affidavit the signed settlement agreement was attached and it appears that the incorrect one was attached to the founding papers. The master agreement was signed on behalf of Respondent and also the settlement agreement was singed. It was admitted in letters to Applicant by attorneys of Respondent that the guarantee had to be supplied and therefore it is clear that it was an admission of the debt which was owed.

[15] It challenged the price paid but it had agreed to that price and therefore this was also no defence. The machine they refer to at a lower price is not the same as the one that had been financed. Accordingly there is nothing on the papers to indicate that the amount which is claimed has been settled in any way by Respondent. The settlement agreement has been breached there is nothing in the papers by Respondent to indicate to the contrary. There was also no basis for Respondent to choose not to make the required payments.

[16] I am accordingly satisfied that from the papers it is indeed apparent that Respondent is a creditor in the amount of approximately R16 000 000.00, that it is in arrears with R5 000 000.00. It has not made any payments, it signed the settlement agreement which it breached and accordingly that there is no defence to the claim Applicant has shown that it is entitled to liquidate Respondent as it has complied with the provisions of the Companies Act.

Order:

I accordingly grant a rule *nisi* returnable on 21 July 2026 as set out in paragraphs 1, 2 and 3 of the notice of motion.

[redacted]

P C BEZUIDENHOUT J.

JUDGMENT RESERVED: 19 FEBRUARY 2026

JUDGMENT HANDED DOWN: 26 MAY 2026

COUNSEL FOR APPLICANT: R M VAN ROOYEN

Instructed by: Edward Nathan Sonnebergs Inc

Umhlanga

Tel: 031 536 8616

Email: aykhan@ensafrica.com

Ref: A Khan/054/0542225

C/O: Stowell

Pietermaritzburg

Email: sarahm@stowell.co.za

Ref: S Myhill

COUNSEL FOR RESPONDENT: N LALLA

Instructed by: Bilal Malani & Associates

Durban

Tel: 031 100 1281 / 083 786 6203

Email: bilal@malanilaw.co.za

Ref: Mr Malani/Lidcor

C/O: Vathers Attorneys

Pietermaritzburg

Tel: 033 342 4099