

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

Case No: 83176/2026

1. REPORTABLE:	YES
2. OF INTEREST TO OTHER JUDGES:	YES
3. REVISED:	NO

In the matter between:

BUSHVELD VAMETCO HOLDINGS (PTY) LTD
(in business rescue)

First Applicant

BUSHVELD VAMETCO ALLOYS (PTY) LTD
(in business rescue)

Second Applicant

PIERS MARSDEN N.O.

Third Applicant

JENNA LEE OSBORNE N.O.

Fourth Applicant

and

SPR VANCHEM (PTY) LTD
(in business rescue)

First Respondent

PHAHLANI MKHOMBO N.O.

Second Respondent

MOSES SINGO N.O.

Third Respondent

**COMPANIES AND INTELLECTUAL PROPERTY
COMMISSION**

Fourth Respondent

**ALL AFFECTED PERSONS OF SPR VANCHEM (PTY)
LTD (in business rescue)**

Fifth Respondent

JUDGMENT

This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail and uploading it onto the electronic platform. The date and time of hand-down is deemed to be 10h00 on Thursday 7 May 2026.

COOKE AJ:

1. The first and second applicants ("**Vametco**") are represented by their appointed business rescue practitioners – the third and fourth applicants ("**Vametco's BRPs**"). The first respondent ("**Vanchem**") was placed into business rescue by resolution of its board in December 2025, and is represented in these proceedings by its business rescue practitioners – the second and third respondents ("**Vanchem's BRPs**").
2. Vametco contends that it is a creditor of Vanchem, on its version owed more than R 165 million. Vametco submitted a claim in this amount, which was rejected by Vanchem's BRPs. Vametco contends that the rejection by Vanchem's BRPs is an unlawful infringement of its rights as a creditor of Vanchem. As a result, Vametco seeks that, pending the final determination of an application to determine its claim, Vanchem's BRPs are interdicted from:
 - 2.1. convening and presiding over the meeting convened in terms of section 151 of the 2008 Act ("**the s 151 Meeting**"); and

- 2.2. permitting any vote in the business rescue of Vanchem, including pursuant to section 151.
3. Vanchem's BRPs have given notice of their intention to publish a business rescue plan on 8 May 2026 ("**the Plan**"). A draft has not been circulated and, save for Vanchem's BRPs reference to a dispute resolution mechanism that will be included in the Plan, its proposed terms are not known and have not been disclosed in these proceedings.
4. Vametco asserts that:
- 4.1. the matter is urgent as a result of the impending publication of the Plan. The premise of that assertion is that section 151(1) of the 2008 Act obliges Vanchem's BRPs to convene the s 151 Meeting within 10 days of the Plan being published, although section 151(2) permits the s 151 Meeting to be convened on 5 days' notice. The result, given the intended publication date of 8 May 2026, is that the s 151 Meeting will occur on any day between 15 and 22 May 2026; and
- 4.2. the fact of the Plan not yet having been published does not detract from the urgency of the matter because the right that it seeks to protect is the ability to have its vote counted at the s 151 Meeting.
5. That being the nature of the right contended for, it is evident that the time periods imposed in Chapter 6 of the Companies Act 71 of 2008 ("**the 2008 Act**") are such that an approach to the urgent court is not only justified but necessary. In the exercise of my discretion, I accordingly enrol the matter as urgent.

6. Before I consider whether the requirements for the interdict sought have been met by Vametco, I outline the relevant parts of the litigation in *Volkar NO and Others v Big Sky Trading*¹ and its appeal to the full court.²
7. *Volkar* concerned the reconsideration of a *rule nisi* that had been sought and obtained *ex parte* by the Volkars³ as creditors of Big Sky (a company in business rescue). The proposed business rescue plan had been published, and the Volkars complained that their multimillion Rand claims had been respectively diminished and effectively reduced to zero, such that their voting interests were materially diluted as a result. The *rule nisi* interdicted the section 151 meeting from being convened, and a vote taken thereat, until the value of the Volkar's claims and voting interest had been determined.
8. On the return day, Pietersen AJ reconsidered and discharged the rule on the basis that no case for an interdict had been made out. Pietersen AJ's primary reason for doing so was because the Volkars had an alternate remedy under the proposed plan. The relevant findings in that regard were:

[44] The respondents submitted that the business rescue plan provides for an adequate remedy in the event of the business rescue practitioner's decision to reject a claim. The respondents relied on the following paragraph under clause 4.1.6.9 of the plan:

'The business rescue practitioner's decision to reject a claim shall be subject to review by the High Court of South Africa upon the application of any party affected thereby, provided that any such review proceedings shall be brought within 90 (ninety) days of receipt of advice of that decision in writing from the business

¹ (*in business rescue*) and *Another* 2025 (3) SA 667 (KZP)

² Appeal case number: AR484/24

³ The Volkars were the trustees of a trust and, together with the third applicant a quo and third appellant before the full court, they contended that their claims had been incorrectly reflected. For convenience's sake I refer to them collectively as "the Volkars"

rescue practitioner, acting in that capacity. Should the affected party fail to make such an application, they shall be deemed to have waived their right to dispute such decision and shall thereafter be debarred from bringing such review proceedings.'

[45] *In the circumstances the applicants would have been entitled to review the business practitioner's decision not to recognise their claims. On the papers before me, no reason was advanced why this does not constitute an adequate alternative remedy.*

[46] *In addition, the aforesaid alternative remedy clearly provides for an instance where claims are rejected by the business rescue practitioner and allows an aggrieved creditor to exercise its rights in court. The alternative remedy therefore satisfies the requirements in Hotz.*

[47] *Furthermore, even if the business rescue plan did not contain adequate remedies in the event of a rejection of a creditor's claim by the business rescue practitioner, the Act itself provides for remedies to be exercised by aggrieved affected persons. The applicants approached the matter from the premise that the vote in respect of their claims will go against them as other creditors are expected to act in their own interests. That may be so, but the anticipated outcome of the meeting cannot serve as a justification for its indefinite postponement pending finalisation of litigation pertaining to the Trust's claims. The applicants ought to have exercised their rights in terms of s 152(1)(d) of the Act by attending the meeting and bringing a motion to amend the proposed plan in order to provide for the full extent of their claims. Alternatively, the applicants could have brought a motion to direct the business rescue practitioner to adjourn the meeting in order to revise the plan for further consideration in terms of s 152(1)(d)(ii). The applicants failed to exercise these remedies.*

[48] *If the meeting proceeded and the business rescue plan was adopted, the applicants could further have applied under s 130(1)(a)(ii) to apply to set aside the resolution to commence business rescue on the basis that there is no reasonable prospect of rescuing the company, as the plan was not validly adopted in circumstances where the plan was approved on the strength of affected persons exercising a voting interest which they did not have.*

[49] In Airports Co v Spain NO Chetty J also made reference to this remedy:

'Whatever the applicant's concerns are in relation to the validity of the plan adopted on 23 July 2018 or the procedure which preceded its adoption, the plan was never challenged or set aside by a court. On that basis, I must assume that the plan adopted was in accordance with the Act and is therefore binding on all parties until set aside.'

[50] I am, therefore, satisfied that a number of alternative remedies were at the disposal of the applicants. The applicants have, therefore, failed to satisfy the requirements for interim relief, and the rule nisi thus stands to be discharged.

9. On appeal, the full court found that the Volkars were clearly creditors of Big Sky as their claims were reflected in Big Sky's management accounts. It held that the reduction of what is evidently a significant claim to zero divests the creditor of standing at the section 151 meeting and so they are not permitted to propose any of the measures provided for in section 152 of the 2008 Act. In overturning the decision of Pietersen AJ, and confirming the interdict, the full court opined:

[65] To suggest that the interim interdict ought to have been refused on the basis that the third appellant ought to have attended the meeting convened in terms of s 151 of the Act, and exercise its non-existent rights as an affected person, is simply nonsensical. Attending the meeting or instituting proceedings for the review of the second respondent's decisions, does not provide the third appellant with a coercive mechanism to preserve the status quo. Only an interdict could have that effect.

10. Vametco relies heavily on the decision of the full court in *Volkar* and has fashioned the relief that it seeks in this application according to the relief sought, and ultimately granted by the full court.
11. During the course of argument I was informed that the decision of the full court is currently awaiting a hearing on appeal before the Supreme Court of Appeal.

The nature of Vametco's asserted right

12. In paragraph 59 of the founding affidavit Vametco stated:

Such harm cannot be adequately cured by relief in due course. A later challenge would be after the fact, after the meeting has been held, after votes have been cast and a decision to adopt the plan potentially made, and after the statutory process has already been driven forward on a potentially incorrect footing, with highly prejudicial consequences for Vametco

13. Any 'highly prejudicial consequence' could only arise if the provisions of the Plan gave rise to prejudicial, or potentially prejudicial consequence for Vametco. Necessarily, that cannot be established or even considered until the Plan is published. Careful to understand the precise nature of the right that Vametco contended for in these proceedings, I put that difficulty to Mr Franklin who confirmed that what Vametco seeks to protect in this application is the right to vote at the s 151 Meeting,⁴ and necessarily the extent of its voting interest.

14. Having confined the asserted right for purposes of these proceedings, the consequent rights that a proved creditor might enjoy in the business rescue are not relevant to this application. Indeed, they may well be obtained in due course by following the dispute mechanism in the Plan.⁵ An assertion of rights that may or may not arise, and similarly may or may not be harmed, pursuant to the vote and adoption of the Plan would non-suit Vametco for two reasons:

⁴ There was some suggestion in reply that Vametco sought to exercise its rights under section 152(1)(d) of the Act and either propose an amendment to the Plan or direct Vanchem's BRPs to revise it. However, in circumstances such as these where the Plan has not been published, Vametco cannot know whether it wishes to exercise either right and so the application would be premature in the circumstances

⁵ It is fundamental that in both the body of their affidavit and in correspondence between the parties, Vanchem's BRPs have alluded to Vametco's ability to employ the *dispute resolution mechanisms ordinarily incorporated into the plan*. The foreshadowed inclusion of a mechanism by which Vametco could establish its claim in due course means that the refusal to admit Vametco's claim by Vanchem's BRPs at this juncture is not the death knell of a claim by Vametco in due course.

- 14.1. first, the matter could not be urgent until the Plan is published and the potential infringement of rights assessed; and
- 14.2. secondly, a dispute mechanism in the Plan would likely afford Vametco an alternate mechanism to assert those rights (i.e. other than the right to vote at the s 151 Meeting).⁶
15. Vametco's asserted claim arises from clause 3.1.3 of the Fourth Amendment and Undertakings Letter dated 8 August 2024 read with the Amendment and Restatement Deed - Production Financing Agreement dated 28 June 2024 (together "**the Contract**"). For present purposes⁷ it suffices to recite the content of clause 1.5.12 which defines *Historic Net Trading Account Balance* as:
- The net aggregate amount owing by the Vanchem Entities to all of the Vametco Entities⁸ in relation to the trading account(s) of the Vametco Entities which, as at 30 April 2024, consisted of:*
- a net amount of R93,271,737 (the Current Historical TAB); plus*
 - a net amount of R71,896,964 (the Long-Term Historical TAB),*
- totalling R165,168,701*
16. The Contract is not in dispute between the parties and, on its face, clause 1.5.12 records a debt owed by Vanchem to Vametco. Vanchem's BRPs do not contend that the amounts were paid or, in absolute terms, that they are not due. Instead, they point to the reference in clause 3.1.3 of the Contract to the *Vanchem PFA*

⁶ Ibid

⁷ The computation in clause 3.1.3 might give rise to additional or different obligations than those recorded as the *Historic Net Trading Account Balance*. It was not clear from the papers whether this is so or whether the amount of R165,168,701 accrued in terms of clause 3.1.3, however the components of the *Historic Net Trading Account Balance* are both expressly referred to in clause 3.1.3. In any event, that certainly was the basis on which the matter was argued before me

⁸ The "Vametco Entities" are defined as the subsidiaries of "BVL". Although not immediately evident from the contract, the founding affidavit indicates that BVL is Vametco Guernsey and that the first and second applicant are subsidiaries of it. The contrary was not contended for and so I accept that this is so

Obligations, and assert the potential for them to constitute either a subordination or a contingency to payment by Vanchem.

17. Mr Rood, who appeared for Vanchem, did not contend for a subordination for reason other than clause 3.1.3 of the Contract and so, in its particular terms, it is not a true subordination with the consequence that Vametco's claim under the Contract is not provable until the claims in favour of which it is subordinated are extinguished.⁹ Accordingly, even if payment of the *Historic Net Trading Account Balance* is dependent upon satisfaction of the *Vanchem PFA Obligations*, it would not, and does not, extinguish the Vametco's apparent claim.¹⁰
18. Moreover, Vametco has made numerous requests of Vanchem's BRPs to identify precisely which of the *Vanchem PFA Obligations* exist, and that have not been satisfied. No extant obligation has been identified or communicated to Vametco. In argument, Mr Rood submitted that Vanchem's BRPs are still investigating Vanchem's affairs and so the potential for the discovery of *Vanchem PFA Obligations* remains a possibility. While I agree that further investigation may unearth *Vanchem PFA Obligations*, I am of the view that this is irrelevant to the present enquiry because, even if a *Vanchem PFA Obligation* does exist and so defers payment, it would not preclude a claim by Vametco, or otherwise negate its existence.
19. Accordingly, I accept that Vametco has established, at least *prima facie*, an assertable claim against Vanchem. However, that conclusion is not the end of

⁹ See *Ex parte De Villiers and Another NNO: In re Carbon Developments (Pty) Ltd (In Liquidation)*, 1993 (1) SA 493 (A), albeit in the context of a winding-up and not business rescue

¹⁰ It was not contended that Vametco was a conditional creditor, see *Brand v Morgan Creek Boerdery (Pty) Ltd and Others* 2026 (3) SA 171 (WCC)

the determination of Vametco's asserted right in these proceedings, as the parties are at odds regarding the consequence of a potential claim. The letter from Vametco's attorneys dated 31 March 2026 records:

Furthermore, section 145 provides that a creditor has a voting interest equal to the value of the amount owed to it. In other words, the only enquiry is whether Vametco is a "creditor" (which your clients cannot lawfully dispute). Once that is established, which it has been, the Companies Act expressly provides that our client "has" a voting interest equal to the value of its claim". It follows that Vametco, as a creditor, automatically has a voting interest to the value of the amount it is owed, notwithstanding that such amount may not yet be due and payable.

20. By contrast, the inference from correspondence sent by Vanchem's attorneys is that a voting interest arises only once a claim is accepted. The occurrence of a voting interest thus requires a consideration of the provisions of the 2008 Act.
21. The apparent lack of clarity and resultant confusion in the 2008 Act is the subject of considerable judicial lament.¹¹ Notably, in *Panamo*¹² Wallis JA found:

'Business rescue proceedings under the Companies Act 71 of 2008 (the Act) are intended to "provide for the efficient rescue and recovery of financially distressed companies, in a manner that balances the rights and interests of all relevant stakeholders". They contemplate the temporary supervision of the company and its business by a business rescue practitioner. During business rescue there is a temporary moratorium on the rights of claimants against the company and its affairs are restructured through the development of a business rescue plan aimed at it continuing in operation on a solvent basis or, if that is unattainable, leading to a better result for the company's creditors and shareholders than would otherwise be the case. These commendable goals are unfortunately being hampered because the statutory provisions governing business rescue are not always clearly drafted. Consequently, they have given rise to confusion as to their meaning and provided ample scope for litigious parties to exploit inconsistencies and advance technical arguments aimed at

¹¹. See *Diener NO v Minister of Justice and Correctional Services and Others* 2019 (4) SA 374 (CC); *Southern Sky Hotel and Leisure (Pty) Ltd t/a Hans Merensky Hotel and Spa (In Liq) and Others v Southern Sky Food Enterprises (Pty) Ltd* 2023 (4) SA 99 (SCA)

¹² *Panamo Properties (Pty) Ltd and Another v Nel NO and Others NNO* 2015 (5) SA 63 (SCA)

stultifying the business rescue process or securing advantages not contemplated by its broad purpose. This is such a case.'

22. While I do not impute any of the untoward conduct apparent in *Panamo* to either of the parties here, the confusion in the 2008 Act often leads to the broad purposes of business rescue being stultified even in the *bona fide* and legitimate exercise of perceived rights. This is such a case for the reasons that follow.
23. The persons permitted to attend the s 151 Meeting are expressly defined in section 151 of the Act:

151 Meeting to determine future of company

- (1) *Within 10 business days after publishing a business rescue plan in terms of section 150, the practitioner must convene and preside over a **meeting of creditors and any other holders of a voting interest**, called for the purpose of considering the plan.*

24. At that meeting, the following persons are permitted to participate in terms of section 145(2):

145 Participation by creditors

...

- (2) *In addition to the rights set out in subsection (1), each **creditor** has-*
(a) *the right to vote to amend, approve or reject a proposed business rescue plan, in the manner contemplated in section 152;*

25. A proposed plan will be accepted where it meets the requirement of section 152(2):

152 Consideration of business rescue plan

- (1) ...

- (2) *In a vote called in terms of subsection (1) (e), the proposed business rescue plan will be approved on a preliminary basis if-*
- (a) *it was supported by the holders of more than 75% of the **creditors' voting interests** that were voted; and*
 - (b) *the votes in support of the proposed plan included at least 50% of the independent creditors' voting interests, if any, that were voted.*

26. A 'voting interest' is defined as:

*an interest as **recognised**, appraised and valued in terms of section 145 (4) to (6).*

27. Leaving aside subsections (4)(b) to (6) – which concern the appraisal and valuation of subordinated claims and creditors' independence – a creditor's voting interest is determined in accordance with section 145(4)(a), which provides:

- (4) *In respect of any decision contemplated in this Chapter that requires the support of the holders of **creditors' voting interests**-*
- (a) *a secured or unsecured creditor has a **voting interest** equal to the value of the amount owed to that creditor by the company...*

28. On a plain reading, these provisions envisage that:

- 28.1. the meeting may be attended by both **creditors** and holders of a **voting interest** (section 151);
- 28.2. every **creditor** has the right to approve, reject or propose amendments to a plan (section 145(2));
- 28.3. only the votes of **creditors' voting interests** are to be reckoned in determining a vote to adopt a proposed plan (section 152(2)(a)); and
- 28.4. a secured or unsecured **creditor's voting interest** is equal to the value of the amount owed to that creditor by the company (section 145(4)(a)).

29. These provisions of the 2008 Act give rise to, at least, these paradoxes:
- 29.1. a creditor has an apparent automatic right to vote at the section 151 meeting, but their vote is meaningless unless they have a voting interest;
- 29.2. a voting interest is equal to the value of the amount owed to the creditor, but it is not a voting interest (as defined) until it is 'recognised'.
30. While a business rescue practitioner is permitted by section 147(1)(a)(ii) to "receive proof of claims by creditors", the 2008 Act is silent on who must determine them or how. There is neither a process nor procedure for claims to be proved or determined, as there is under section 366 of the Companies Act 61 of 1973, or section 44 of the Insolvency Act 24 of 1936 ("**the Insolvency Act**").
31. What then, as in this case, if a 'creditor' asserts a claim and a consequent right to vote in an amount equal to its asserted claim – as they are expressly permitted to do under sections 145(2) and (4)(a) – but the business rescue practitioner refuses to 'recognise' that claim as giving rise to a 'voting interest'?
32. In practice, and drawing from the procedure of handling claims in a winding-up, it is generally accepted that while a meeting in terms of section 151 may be attended by creditors with disputed claims, only creditors whose claims have been admitted by the business rescue practitioner may vote under section 152. This inferred position has been necessary due to the absence of a provision in the 2008 Act akin to that in section 52 of the Insolvency Act:

52 Voting at meeting of creditors

- (1) Save as in this section and in section forty-eight is otherwise provided, every creditor of an insolvent estate shall be entitled to vote at any meeting of the*

creditors of that estate as soon as his claim against the estate has been proved.

33. The confusion, circular provisions and notable omissions aside, the evident legislative intention is that an early step in the rescue of a company is to empower the appointed business rescue practitioner to ascertain creditors' claims on a preliminary basis. In this position of power, a business rescue practitioner is bound by the duties imposed under the 2008 Act to act faithfully and, when conducting the initial investigation, recognise amounts owed by the company and confer a voting interest on the holders of legitimate claims.
34. In a perfect world, every legitimate creditor's interest would be accurately recognised in anticipation of a meeting to approve a proposed business rescue plan. In that event, the process of business rescue would be driven by the collective majority wishes of legitimate creditors – as it certainly should be. However, the necessity for an initial assessment of submitted claims is apparent, and was captured eloquently by Wilson J in *Wescoal*:¹³

If just any creditor could vote an interest at a s 152 meeting ... there would be little to stop speculators or asset strippers preying on business rescue proceedings, blocking the adoption of appropriate business rescue plans, and forcing liquidations where they could be avoided.

35. While the circumstances in *Wescoal* were different, the protective end of a business rescue practitioner making a preliminary determination is infallible.¹⁴

The solution is not a perfect one, particularly in a case such as this where no

¹³ *Wescoal Mining (Pty) Ltd and Another v Mkhombo NO and Others* 2024 (2) SA 563 (GJ) at para 22

¹⁴ The decision of the High Court in *Wescoal* was overturned on appeal for reasons unrelated to the validity of the portion of the judgment quoted. See *Mashwayi Projects (Pty) Ltd and Others v Wescoal Mining (Pty) Ltd and Others* 2025 (3) SA 441 (SCA). The SCA's decision is on appeal to the Constitutional Court. The matter has been argued and judgment is awaiting

ulterior motive or improper purpose can be attributed to Vametco or the claim it asserts.

36. Wittingly or otherwise, the legislature seemingly envisaged and accepted that a proposed business rescue plan might be voted in under section 152 of the 2008 Act, to the exclusion of the vote of certain creditors who may have legitimate claims. This is evident as section 150(2)(a)(ii) of the 2008 Act mandates that a business rescue plan contain, *inter alia*:

a complete list of the creditors of the company when the business rescue proceedings began, as well as an indication as to which creditors would qualify as secured, statutory preferent and concurrent in terms of the laws of insolvency, and an indication of which of the creditors have proved their claims;

37. The insistence that a proposed business rescue plan include 'a complete list of creditors', with an acknowledged delineation between the claims that are proved and those that are not, cannot be construed as anything but an acknowledgement that the circumstance that has eventuated in this case may well arise.
38. It follows that the establishment of a right is contingent not upon a creditor's assertion of a claim, but on recognition of that claim by the business rescue practitioner after receiving proof of it. Owing to concerns held by Vamtech's BRPs, Vametco's claim was rejected. As matters stand, Vametco has no voting interest, and in turn its assertion of that right for purposes of an interdict is thus not without difficulty.
39. Because the 2008 Act does not provide a workable means to navigate the determination of rejected claims, and in the apparent appreciation that the claim

asserted by Vametco is not entirely frivolous, Vamtech's BRPs proposed a mechanism for the claim to be determined, and in turn Vametco's voting interest to be established. The existence of a voting interest informs the strength of the right asserted by Vametco in these proceedings.

Irreparable harm

40. The right that Vametco seeks to protect is inextricably linked to the s 151 Meeting. Once the s 151 Meeting is convened and voting occurs at it, the right contended for by Vametco is lost and irreparable harm to that right (i.e. the right to vote) is inevitable. However, the harm that may result to Vametco depends entirely on it establishing the right for which it contends. That is, if Vametco has a voting interest, it will be harmed irreparably by a vote that does not consider its view. As a corollary, if Vametco has no voting interest, it has no right and a vote to its exclusion does not give rise to any harm to Vametco.

41. While the latter statement is likely true of the relationship between the *right* and *irreparable harm* aspects of an interdict in any case, it has particular consequences in circumstances where an alternate resolution mechanism is proposed to determine a claim that Vamtech's BRPs contend is tenuous, and in consequence whether the right contended for exists at all.

Alternate remedy

42. The full court in *Volkar* found that the neither the prospect of review nor a challenge to the approved business rescue plan after the section 151 meeting is an adequate remedy to a creditor that seeks to vote, but who could not as its claim was rejected. The legal validity of that conclusion is one that will be settled

by the Supreme Court of Appeal. I need not express a view in that regard, as this matter can be determined on its facts – which differ in the following material respects from the facts in *Volkar's* case. In *Volkar*:

42.1. the proposed plan had been published and its content was known;

42.2. the alternative remedy was contained in the proposed plan; and

42.3. there was not an offer by the business rescue practitioners to have the claim determined prior to creditors voting on the proposed plan.

43. On 14 April 2026, Vanchem's BRPs proposed a fast-track arbitration procedure that envisaged a determination of Vametco's claim by a retired judge within a six week timeframe. Upon acceptance of the proposal, Vanchem's BRPs would approach creditors for approval to delay the s 151 Meeting until Vametco's claim had been determined. Importantly, the proposal by Vanchem contained this caveat:

Should creditors not agree to any extension, your clients remain free to re-enrol the application and advance whatever case they may be advised to make at that stage, pending the outcome of the arbitration process.

44. Vametco refused the proposal on the basis that it had no confidence that Vanchem's creditors would agree to a suspension of the s 151 Meeting and that its position would be left at risk as a result.

45. The blunt refusal is peculiar as Vametco's case for an interdict would likely be strengthened once the dispute resolution process was agreed with Vanchem's BRPs, and a finite delay of six weeks made known to creditors and post commencement financiers.

46. It was precipitous for Vametco to reject the proposal outright, and certainly so before Vanchem's BRPs had canvassed the wishes of creditors and obtained a response either way. Even where no timely response was forthcoming from creditors, an urgent approach to court on a much narrower basis could have been factored into the timeline. As Vanchem's BRPs had proposed the expedited arbitration, their opposition to an interdict aimed at facilitating it would be beset with difficulty, and they may even have supported Vametco's application for a temporary interdict, or certainly advised proved creditors not to oppose it.
47. While Vametco urged me to adopt the conclusion drawn by the full bench in *Volkar*, even if I did, the facts of this case are such that a suitable alternate remedy is available to Vametco in any event. Even if that remedy required some finessing, it is one that Vametco ought to pursue.

The balance of convenience

48. At their core, the interests that must be weighed and balanced in this matter are:
- 48.1. on the one hand, the need and desire for business rescue to be driven by the true body of creditors whose wishes inform the process at every stage; and
- 48.2. on the other, for the process to be efficiently implemented at the hand of the appointed business rescue practitioner(s) whose expertise guides the process in a manner most likely to result in the company being rescued.
49. Given the evident and stated focus of the 2008 Act on business rescue proceedings being implemented expeditiously, a delay of untold duration is

inimical to the scheme of business rescue as a whole, and has been accepted as adverse to the interests of creditors, affected persons, the company itself.¹⁵ If frivolous claims could be easily identified, they would be immediately rejected and the process of business rescue would proceed on the strength of the wishes of legitimate creditors. In practice this is not so easy and claims may be dressed in a manner that lends them some degree of credence, if only on the surface. The difficulty lies in distinguishing between the two, as business rescue should not be, and should not be permitted to be, halted on the mere say-so of any asserted creditor, lest undue interference or delay undermine the process entirely.

50. Conversely, approval of a business rescue plan may have far-reaching consequences. It is often of particular concern that the content of an approved plan will bind creditors who were perhaps unduly excluded from exercising their voting interest against it.¹⁶
51. In an effort to balance these competing interests, Vamtech's BRPs suggested an expedited private arbitration to determine Vametco's claim and, in turn, establish the existence or extent of its voting interest. Had Vametco embarked upon this process when it was first suggested, it would be at an advanced stage by the time the s 151 Meeting was due to take place. A proposal to creditors that the s

¹⁵ See *Koen v Wedgewood Village Golf and Country Estate (Pty) Ltd* 2012 (2) SA 378 (WCC) at para 10; *AG Petzetakis International Holdings Ltd v Petzetakis Africa (Pty) Ltd and Others (Marley Pipe Systems (Pty) Ltd and Another Intervening)* 2012 (5) SA 515 (GSJ) para 25; *Booyesen v Jonkheer Boerewynmakery (Pty) Ltd and Another* 2017 (4) SA 51 (WCC), paras 47 to 50; *Mhlonipheni v Mezepoli Melrose Arch (Pty) Ltd* 2020 JDR 1033 (GJ)

¹⁶ While this is a general concern often raised, it is not so in this matter for two reasons: first, because of the express limitation of the issues and the right asserted by Vametco, and secondly, because the Plan has not yet been published the infringement or potential infringement of any right cannot be established or even considered

151 Meeting be held in abeyance for whatever short period remained of the expedited arbitration process would cause little threat to the business rescue.

52. The very purpose of the proposed arbitration process was to determine what Vamtech's BRPs consider a tenuous claim, and so rejected. This matter is unlike *Volkar's* case where the claim was clear and had been captured in management accounts. Nor do cogent grounds exist to question the motives of Vamtech's BRPs in rejecting Vametco's claim, as there were in *Volkar*. Indeed, the suggestion by Vamtech's BRPs that Vametco's claim be finally determined on an expedited basis evidences their *bona fides* and willingness to have the claim determined expeditiously.
53. Because Vametco sought an interdict pending litigation to be instituted in the ordinary course, the delay to the process of business rescue would be both unknown and certainly in excess of six weeks. In circumstances where an alternate mechanism was proposed to determine a contested claim in a manner not meaningfully different from that envisaged by Vametco, just on compressed timelines, the balance must weigh against the business rescue process being entirely halted for an untold duration in the interests of a single asserted creditor whose right is uncertain and who had an alternate remedy available to it.

Conclusion

54. In the circumstances, there is no reason to interdict the publication of the Plan. Similarly, and particularly while Vanchem's BRPs are obtaining the instruction of creditors in respect of an extension for the period to convene the s 151 Meeting, it is undesirable to impose an interdict of unknown duration on that meeting.

55. I do not exclude the possibility of a further urgent application being necessary if Vanchem's creditors do not agree to an extension for the date of the s 151 Meeting. However, once the expedited arbitration proposed by Vanchem's BRP's is in place, a finite timeline more readily ascertainable, and the terms of the Plan known, a court will be in a significantly improved position to balance the competing interests in the knowledge that the strength of Vamecto's right will be finally determined by a known date.
56. While it is not desirable for anyone to be forced to approach an urgent court on extremely truncated timelines, or for a court to be called to make a near immediate order, in the circumstances there is little else to be done. This unfortunate position arises not just from Vametco's rejection of the truncated dispute mechanism proposed by Vanchem's BRPs, but also due to the extremely short periods stipulated in the 2008 Act without properly catering for instances of legitimate dispute.
57. The goal of rescuing ailing companies in a mere matter of months was and remains undoubtably laudable. However, lived experience over the past fifteen years has proven it unachievable. With that experience in mind, it may well be time for the legislature to reconsider the haste with which the 2008 Act expects the process of business rescue to be implemented and completed, and factor reality into that expectation.

I make the following order:

1. *The application is dismissed;*

2. *The applicants are to pay the costs of the first, second and third respondents on scale C of Uniform Rule 67, including the costs of two counsel.*

[REDACTED]
[REDACTED]

M J COOKE
ACTING JUDGE OF THE HIGH COURT
GAUTENG, JOHANNESBURG

DATE OF HEARING	22 April 2026
DATE OF JUDGMENT	7 May 2026
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