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IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION: PRETORIA)

Case number: 016478/2025

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

DATE: 4 June 2026

SIGNATURE

In the matter between:

AJP HOLDINGS (PTY) LTD

Applicant

And

ANDKAN HOLDINGS (PTY) LTD

First Respondent

K[...] S[...] R[...]

Second Respondent

JUDGMENT

MINNAAR AJ,

Introduction:

[1] In June 2019, Mr F and Me R (the second respondent) met another.

On 13 May 2020, Me R, was blessed with a daughter ('CL'), born of a previous relationship. The meeting between Mr F and Me R evolved into a romantic relationship in October 2020, and the relationship became official in February 2021. They, together with C, moved in together in September 2021. On 4 February 2023, the couple's daughter ('CS') was born.

[2] Around the time CS was born, the couple agreed to purchase a property for their family. In the words of Mr F, this was to provide financial security for Me R and their daughters in case anything befell him that would make it impossible for him to provide for them. Together, they decided to purchase a property in a company in which Me R would own the majority of the shares. For this purpose, Andkan Holdings (Pty) Ltd (the first respondent) was incorporated on 18 May 2022. The name '*Andkan*' is a combination of the first names of Mr F (*A[...]*) and Me R (*K[...]*), and one can only imagine that the company's name was, at the time, an indication of the love and devotion the couple had for one another.

[3] Me R became the owner of 119 of the 120 shares in Andkan. The applicant, AJP Holdings (Pty) Ltd ('*AJP*'), is the owner of the remaining share in Andkan. Mr F is the sole shareholder and director of AJP. Up until 19 March 2025, he was also the sole director of Andkan. Andkan and AJP share the same registered address.

[4] On 10 October 2022, Andkan then purchased a luxurious property for the family to reside in (*the matrimonial property*). In the applicant's heads of argument, it is stated that Andkan is a special-purpose vehicle incorporated solely to acquire and hold the matrimonial home.

[5] Despite being formally married on 28 October 2022, Mr F and Me R held a traditional wedding ceremony only on 3 October 2023. On 27 October 2023, Me R informed Mr F that she wanted a divorce. Mr F instituted divorce proceedings under case number 052216/2024, and the action is still pending.

[6] Mr F approached the court with a Rule 43 application seeking relief *pendente lite* in the divorce proceedings. Me R lodged a counterclaim seeking maintenance. The application was heard on 21 January 2025, and Nyathi J gave a judgment on 16 May 2025. Relevant to the matrimonial home, Nyathi made the following order:

“m. The respondent (Me R) is to remain in occupation of the Waterfall property, with undisturbed use and occupation thereof to the exclusion of the applicant.”

[7] On 6 February 2025, Mr R, as the sole director of AJP, resolved that AJP should proceed with an application to liquidate Andkan. On 14 February 2025, this application was served on Andkan, and on 25 February 2025, it was served on Me R.

The winding-up application:

[8] The application is founded on two primary grounds:

- a. That Andkan is unable to pay its debts as contemplated in section 344(f), read with sections 345(1)(a) and (c), of the Companies Act 61 of 1973 (*“the 1973 Act”*).
- b. It is just and equitable that Andkan be wound up as contemplated in section 344 (h) of the 1973 Act (or section 81(1)(d) of the Companies Act 71 of 2008), due to a complete deadlock between the shareholders and the dissolution of the company’s substratum.

[9] According to AJP, it financed the entire venture to purchase the matrimonial property through a shareholder’s loan to Mr F. As such, AJP is a creditor for this shareholder’s loan in the sum of R14 326 523.01.

[10] It is further alleged that Andkan is commercially insolvent. It has no income-generating business, no cash reserves, and no current assets whatsoever. The allegation is that Andkan is patently unable to pay its debts as they fall due, as evidenced by its inability to service its monthly municipal and levy obligations without further funding.

[11] It is also the case of AJP that the personal relationship between Mr F and Me R has broken down irretrievably. This has destroyed the

very foundation upon which Andkan was built, rendering its original purpose obsolete and creating an irreconcilable deadlock.

The respondents' opposition to the application:

[12] The respondents oppose the application on the following grounds:

- a. The alleged debt is *bona fide* disputed on reasonable grounds;
- b. The dispute regarding the property and the financial arrangement between the parties in relation to the matrimonial property and Andkan is *lis pendens* in the divorce action;
- c. The winding-up undermines an existing Rule 43 court order;
- d. The application constitutes an abuse of process; and
- e. AJP has failed to make out a case in its founding affidavit and is precluded from filing further affidavits to cure such defects.

[13] On the last point raised, AJP filed two applications under Rule 6(5)(e) seeking permission to deliver supplementary affidavits. At the commencement of the hearing, I granted an order that both applications be granted and that the supplementary affidavits by AJP form part of the record.

Analysis:

[14] The main dispute between the parties is whether the money advanced to purchase the matrimonial property was a loan, as alleged by AJP, or, as the respondents allege, in essence a donation to Me R.

[15] It is evident that the noble intention of purchasing the matrimonial property was to provide security to Me R and the daughters. Mr F was instrumental in securing this objective.

[16] Mr F forms an integral part of both AJP and Andkan. AJP's version is placed before this court by Mr F. AJP places heavy reliance on the fact that the shareholder's loan was duly recorded in the Annual Financial Statements of AJP and, as such, that it must be accepted as such. This would mean that Mr F has an asset in the form of a shareholder's loan valued at more than R14 million.

[17] I am also faced with the version by Mr F in his financial disclosure form in the Rule 43 proceedings, wherein he declared, under oath, that the value of his 100% shareholding is only R100.00.

[18] It is a mystery why Me R would be led to believe that she is the majority shareholder of Andkan, which, in turn, owns the matrimonial property, whilst, according to AJP, this was never the case, as Mr F's shareholder's loan would have a stronger right. This pipedream cannot be resolved in these proceedings.

[19] AJP's submission that the defence of *lis pendens* is not applicable, as we are dealing with different parties, a different cause of action, and different relief, is not convincing. Although I am not making any findings in this regard, one cannot ignore the golden thread and Mr F's involvement through his marriage to Me R, as well as his role and influence in both AJP and Andkan. Once again, this is not something that can be resolved in these proceedings.

[20] The security granted to Me R by Nyathi J falls squarely within the purpose of Andkan at the time. One cannot simply wish a court order away. The order by Nyathi J stands, and it would not be proper, through these proceedings, to circumvent same.

Conclusion:

[21] The *Badenhorst* Rule¹ is trite: liquidation proceedings are not designed for the resolution of disputes of fact regarding the existence of a debt. Where a debt is disputed on *bona fide* and reasonable grounds, a winding-up should be refused.

[22] There is a dispute regarding the source of the funds utilised to purchase the matrimonial property. It would not be competent, at this stage, to make a final determination whether this dispute is *bona fide* and premised on reasonable grounds. These are aspects that will

¹ *Badenhorst v Northern Construction Enterprises (Pty) Ltd* 1956 (2) SA 346 (T) at 346 G-H and at 348 A-B

become clear in the adjudication of the divorce after a proper analysis of the evidence of both Mr F and Me R.

[23] It would equally not be prudent to make any order as to costs at this stage.

Order:

Consequently, I make the following order:

1. The application is stayed pending finalisation of the divorce action under case number 052216/2024.
2. Costs will be costs in the application.

Minnaar AJ
Acting Judge of the High Court
Gauteng Division, Pretoria

For the applicant: Adv E J J Nel
Instructed by Vorster & Brandt Inc.

For the respondents: Adv N Strathern
Instructed by Gittins Attorneys Inc.

Heard on: 2 March 2026

Date of judgment: 4 June 2026