

THE REPUBLIC OF SOUTH AFRICA



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

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

Case No:2025-202949

10 June 2026
DATE


SIGNATURE

Case No:2025-003969

F AND R CATAI TRANSPORT SOLUTIONS (PTY) LTD

(IN LIQUIDATION)

First Applicant

KAREN FORTEIN N.O

Second Applicant

CLIFFORD THABANG MAREDI N.O

Third Applicant

RICHARD MASOANGANYE N.O

Fourth Applicant

and

LEBOGANG GRACE MPAKATI

Respondent

INDALO BUSINESS CONSULTING CC

Respondent

(Reg.no 2011/037334/23)

and

SERATIME (PTY) LTD (IN LIQUIDATION)

Intervening Creditor

Delivered: By transmission to the parties via email and uploading onto Case Lines the Judgment is deemed to be delivered.

JUDGMENT

MBOWENI AJ

INTRODUCTION:

[1] This judgment concerns two related insolvency proceedings which were heard together on the return day of provisional orders previously granted by this Court. The first proceeding concerns the provisional sequestration of the estate of Ms Lebogang Grace Mpakati. The second concerns the provisional winding-up of Indalo Business Consulting CC. Although the matters were instituted under separate case numbers and seek different forms of relief, they arise from the same underlying factual matrix, involve substantially overlapping evidence and raise common legal issues. The interests of justice are best served by a single judgment dealing comprehensively with all issues arising from both applications.

[2] The proceedings originated as insolvency applications founded upon a judgment debt obtained by the Applicants against Ms Mpakati and Indalo Business Consulting CC jointly and severally. Following the granting of judgment, the Applicants caused writs of execution to be issued. The execution process proved unsuccessful and culminated in the issuing of a nulla bona return by the Sheriff. Relying upon the

judgment debt, the unsuccessful execution process and the resulting acts of insolvency, the Applicants instituted the sequestration and winding-up proceedings which ultimately served before Swanepoel J.

[3] Swanepoel J granted provisional sequestration and provisional winding-up orders after considering the parties' competing versions and concluding that the Applicants had established the jurisdictional requirements for such relief. In doing so, the learned Judge rejected several of the contentions advanced by the Respondents, including reliance upon an alleged arrangement involving the Industrial Development Corporation which was said to justify payments received by Ms Mpakati during the course of the business rescue proceedings. Having found that the Applicants had established a prima facie case for insolvency relief and that there was reason to believe that sequestration and liquidation would be to the advantage of creditors, the Court issued rules nisi calling upon interested parties to show cause why final orders should not be granted.

[4] The matters did not thereafter follow the conventional course ordinarily associated with return-day insolvency proceedings. Following the granting of the provisional orders, substantial payments were made into the trust account of the Applicants' attorneys. Those payments gave rise to a new and substantially more complex dispute concerning their legal effect. The Respondents contend that the payments extinguished the indebtedness which formed the foundation of both applications and that the Applicants consequently ceased to be creditors. According to the Respondents, once the debt was paid there remained no lawful basis for the continuation of either the sequestration proceedings or the winding-up proceedings.

[5] The Applicants dispute that proposition. They contend that the Respondents' argument fails to appreciate the legal consequences flowing from the granting of the provisional orders. According to the Applicants, once the provisional sequestration and winding-up orders were granted, a concursus creditorum arose in each estate, the rights of creditors became fixed and the proceedings ceased to concern only the interests of the original litigants. The Applicants accordingly submit that the post-provisional-order payments cannot be evaluated according to ordinary principles governing the discharge of indebtedness but must instead be considered within the broader framework of insolvency law and the collective rights of creditors.

[6] The significance of that contention is illustrated by the intervention of Seratime (Pty) Ltd (in liquidation), which asserts an independent interest in the outcome of the proceedings as a creditor. The intervention serves as a reminder that insolvency proceedings are not merely disputes between a debtor and a single creditor. Once insolvency has intervened, the Court is required to consider the interests of creditors generally and to ensure that the statutory purposes underlying the insolvency regime are not undermined by arrangements concluded after the commencement of the insolvency process.

[7] The issues before this Court therefore extend far beyond the simple question whether the judgment debt has been paid. The Court is required to determine the legal effect of payments made after the granting of provisional insolvency orders, the operation of the doctrine of the concursus creditorum, the significance of the intervention by an additional creditor, the relevance of the doctrine of separate legal personality to the source of the funds utilised to make the payments and, ultimately, whether the requirements for final sequestration and final winding-up have been established.

[8] In determining those issues, the Court has considered not only the evidence placed before it on the return day but also the findings previously made by Swanepoel J, the subsequent urgent proceedings before Hershensohn AJ, the intervention proceedings brought by Seratime and the extensive legal authorities relied upon by the parties. Those authorities include a number of important decisions dealing with the nature and consequences of a concursus creditorum, the collective administration of insolvent estates, the requirement of advantage to creditors and the proper exercise of the Court's discretion in insolvency matters.

[9] It is against that background that the issues arising for determination must be considered.

BACKGROUND TO THE BUSINESS RESCUE PROCEEDINGS:

[10] The origins of the present dispute are to be found in the business rescue proceedings of F and R Catai Transport Solutions (Pty) Ltd ("Catai"), a company which was placed under business rescue during August 2018. At the time, the company was

experiencing significant financial distress and business rescue proceedings were commenced in terms of Chapter 6 of the Companies Act 71 of 2008 in an attempt to facilitate its rehabilitation and preserve value for creditors and other stakeholders.

[11] Ms Lebogang Grace Mpakati was appointed as the business rescue practitioner responsible for administering the affairs of the company. In that capacity she assumed extensive statutory responsibilities, including the management of the affairs, business and property of the company, the investigation of its financial position and the development and implementation of a business rescue plan. As a business rescue practitioner, she was entitled to remuneration and reimbursement in accordance with the Companies Act and the regulations promulgated thereunder.

[12] During the course of the business rescue proceedings, substantial payments were made to Ms Mpakati and to entities associated with her. At the time those payments were made, their legality and propriety did not form the subject of judicial scrutiny. Following the eventual failure of the business rescue process and the subsequent liquidation of Catai, however, concerns emerged regarding the extent of the remuneration received and the legal basis upon which certain payments had been authorised.

[13] Following the liquidation of Catai, liquidators were appointed to investigate the affairs of the company and to administer its estate for the benefit of creditors. As part of their statutory duties, the liquidators examined the business rescue proceedings, the remuneration received by Ms Mpakati and the payments made to entities associated with her. Those investigations were undertaken against the backdrop of the statutory framework regulating the remuneration of business rescue practitioners and the fiduciary obligations imposed upon such office bearers.

[14] The liquidators ultimately formed the view that certain payments received by Ms Mpakati and Indalo Business Consulting CC exceeded that which was lawfully permissible under the Companies Act and the applicable regulations. It was further concluded that monies had been received to which neither Ms Mpakati nor Indalo Business Consulting CC was legally entitled and that such monies were recoverable for the benefit of Catai and its creditors.

[15] Ms Mpakati disputed those conclusions and maintained throughout that the payments were lawful. She contended that the remuneration received was justified by arrangements concluded during the business rescue proceedings and that the payments had been authorised and received in accordance with agreements reached with interested parties. Central to her defence was reliance upon what became known in these proceedings as the IDC arrangement, a purported agreement involving the Industrial Development Corporation which was said to justify the payments received.

[16] The liquidators did not accept that explanation. They maintained that no lawful basis existed for the payments and that the amounts received exceeded those authorised by the statutory framework governing business rescue practitioners. As a consequence, proceedings were instituted against Ms Mpakati and Indalo Business Consulting CC seeking recovery of the monies in question.

THE RECOVERY PROCEEDINGS AND THE JUDGMENT DEBT:

[17] The litigation instituted by the liquidators sought repayment of monies allegedly received unlawfully during the course of the business rescue proceedings. The Applicants contended that Ms Mpakati and Indalo Business Consulting CC had received payments to which they were not legally entitled and that such amounts were recoverable for the benefit of the insolvent estate of Catai and its creditors.

[18] The proceedings were vigorously opposed. Ms Mpakati and Indalo Business Consulting CC persisted in their reliance upon the alleged IDC arrangement and denied that any monies were recoverable. The litigation accordingly gave rise to disputes concerning both the factual and legal basis upon which the payments had been made.

[19] Those disputes ultimately culminated in judgment being granted against Ms Mpakati and Indalo Business Consulting CC jointly and severally in the amount of R2 341 311.85 together with interest and costs. The judgment represented a final judicial determination that the monies claimed by the Applicants were recoverable and that Ms Mpakati and Indalo Business Consulting CC were liable to repay them.

[20] Notwithstanding the granting of judgment, the debt remained unsatisfied. The Applicants consequently took steps to enforce the judgment through the ordinary

execution process. Writs of execution were issued and delivered to the Sheriff with instructions to execute against the assets of the judgment debtors.

[21] The execution process proved unsuccessful. The Sheriff was unable to identify sufficient disposable assets capable of satisfying the judgment debt and ultimately issued a nulla bona return. That return recorded, in substance, that the judgment debt could not be satisfied through execution against the assets of the judgment debtors.

[22] The significance of the nulla bona return should not be underestimated. In insolvency proceedings, a nulla bona return frequently constitutes compelling evidence of financial distress and may itself constitute an act of insolvency. The return in the present matter provided objective confirmation that the Applicants had been unable to recover the judgment debt through ordinary execution processes and that the intervention of the insolvency regime may be warranted.

[23] Armed with the judgment debt and the nulla bona return, the Applicants instituted the present sequestration proceedings against Ms Mpakati and the winding-up proceedings against Indalo Business Consulting CC.

THE PROVISIONAL ORDERS OF SWANEPOEL J:

[24] The sequestration and winding-up applications were opposed by the Respondents and ultimately served before Swanepoel J. The issues before the learned Judge extended beyond the mere existence of the judgment debt. The Respondents sought to challenge the underlying basis of the indebtedness and relied heavily upon the alleged IDC arrangement as justification for the payments received during the business rescue proceedings.

[25] A central feature of the Respondents' opposition was the contention that agreements had been concluded which authorised the payments received by Ms Mpakati and Indalo Business Consulting CC. It was contended that those agreements provided a lawful basis for the remuneration received and undermined the Applicants' claims for repayment.

[26] Swanepoel J subjected those contentions to careful scrutiny. The learned Judge observed that despite the significance of the alleged arrangement, no written

agreement had been produced reflecting the terms relied upon by the Respondents. Equally absent was the objective documentary evidence one would ordinarily expect to find if such an arrangement had existed.

[27] The Court further noted the absence of drawdown requests, supporting documentation and other contemporaneous records capable of corroborating the version advanced by the Respondents. The lack of objective evidence assumed particular significance when viewed against the substantial amounts involved and the commercial context within which the alleged arrangement was said to have arisen.

[28] Applying the principles articulated in **Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd**, Swanepoel J concluded that the Respondents' version was untenable on the papers and incapable of creating a genuine dispute of fact. The learned Judge found that the alleged arrangement was unsupported by the objective evidence and could not defeat the Applicants' claims.

[29] Having rejected the Respondents' challenge to the underlying indebtedness, Swanepoel J turned to consider whether the jurisdictional requirements for provisional sequestration and provisional winding-up had been established. In this regard, the Court considered the existence of the judgment debt, the unsuccessful execution process and the legal consequences flowing from the nulla bona return issued by the Sheriff.

[30] The Court observed that the judgment debt remained unsatisfied notwithstanding the opportunities afforded to the Respondents to discharge their obligations. The execution process had yielded no meaningful recovery and the Sheriff had been unable to identify sufficient disposable assets capable of satisfying the debt. These considerations constituted objective evidence of financial distress and were relevant to the question whether insolvency relief was justified.

[31] Swanepoel J further concluded that the nulla bona return constituted prima facie evidence of an act of insolvency and that the Applicants had established the necessary jurisdictional foundation for the granting of provisional insolvency relief.

[32] The Court further considered whether there was reason to believe that sequestration and liquidation would be to the advantage of creditors. The learned Judge accepted that the affairs of the Respondents warranted investigation through

the mechanisms available under insolvency legislation and that there existed a reasonable prospect that creditors might derive benefit from the administration of the respective estates.

[33] Having considered the evidence as a whole, Swanepoel J concluded that the Applicants had established a prima facie case for the granting of provisional sequestration and provisional winding-up orders. The Court accordingly issued rules nisi calling upon interested parties to show cause why final orders should not be granted.

[34] The significance of those orders extends beyond the mere granting of interim relief. The provisional sequestration order and the provisional winding-up order fundamentally altered the legal relationship between the parties. The matters ceased to concern only the enforcement of a judgment debt and entered the realm of insolvency administration, where the interests of creditors collectively assume central importance.

[35] It is important to emphasise that the findings made by Swanepoel J have never been overturned, varied or set aside by any court. Whilst the Respondents continue to dispute aspects of the underlying indebtedness, the fact remains that the judgment debt exists, the provisional orders were granted and those orders continue to stand unless and until discharged by a court of competent jurisdiction.

DEVELOPMENTS FOLLOWING THE PROVISIONAL ORDERS:

[36] The events that occurred after the granting of the provisional sequestration and provisional winding-up orders lie at the heart of the present dispute. Whilst the proceedings had initially concerned the existence of the judgment debt, the unsuccessful execution process and the requirements for provisional insolvency relief, the focus of the litigation shifted materially after the provisional orders had already been granted.

[37] Following the granting of those orders, substantial payments were made into the trust account of the Applicants' attorneys. It is common cause that those payments were received after the establishment of the provisional insolvency regime. The parties

are, however, fundamentally divided concerning the legal consequences flowing from those payments.

[38] The Respondents contend that the payments extinguished the indebtedness which formed the foundation of both applications. According to the Respondents, the payments exceeded the amount necessary to satisfy the judgment debt and included both capital and interest. On this basis it was argued that the Applicants ceased to be creditors and that the continuation of the insolvency proceedings became unsustainable.

[39] The Respondents further contend that the monies utilised to make the payments did not originate from either Ms Mpakati personally or from Indalo Business Consulting CC. Instead, it was argued that the funds originated from entities possessing legal personality separate from that of the Respondents and that the payments therefore constituted ordinary third-party payments falling outside the insolvency regime.

[40] The Applicants dispute these contentions. Whilst accepting that payments were made, they contend that the legal effect of those payments cannot be assessed as though the parties remained engaged in ordinary commercial litigation. According to the Applicants, the granting of the provisional sequestration and winding-up orders fundamentally altered the legal position and introduced considerations which transcend the bilateral relationship between debtor and creditor.

[41] The Applicants accordingly submit that the post-provisional-order payments cannot be evaluated solely through the ordinary law relating to the discharge of obligations. Rather, their legal significance must be determined within the broader framework of insolvency law and with due regard to the collective rights which arose upon the granting of the provisional orders.

[42] The dispute concerning the legal consequences of the payments generated extensive supplementary affidavits, supplementary heads of argument and further litigation. The issues raised by the parties became increasingly focused upon the doctrine of the concursus creditorum, the source of the funds utilised to make the payments and the extent to which arrangements concluded after the granting of provisional insolvency orders can affect the rights of creditors.

[43] These disputes ultimately gave rise to urgent proceedings before Hershensohn AJ and later to the intervention by Seratime (Pty) Ltd (in liquidation), both of which form an important part of the procedural history of the matter.

THE URGENT PROCEEDINGS BEFORE HERSHENSOHN AJ:

[44] Following the granting of the provisional sequestration and provisional winding-up orders, the Respondents launched urgent proceedings before Hershensohn AJ. Those proceedings arose directly from the contention that the payments made after the granting of the provisional orders had fundamentally altered the legal position between the parties and rendered the continuation of the insolvency proceedings unnecessary.

[45] The Respondents sought relief premised upon the argument that the indebtedness which gave rise to the provisional orders had effectively been extinguished. It was submitted that the continuation of the insolvency process could therefore no longer be justified and that the provisional orders should either be discharged or otherwise deprived of practical effect.

[46] The Applicants opposed the relief sought and contended that the Respondents' approach failed to appreciate the legal consequences flowing from the granting of the provisional orders. It was argued that once a concursus creditorum had arisen, the rights of creditors became fixed and could not be defeated through arrangements concluded with individual creditors after the commencement of the insolvency process.

[47] The proceedings before Hershensohn AJ highlighted many of the same issues that now arise on the return day. Those issues included the source of the funds utilised to make the payments, the role of entities associated with the Respondents, the legal significance of the concursus creditorum and the extent to which post-provisional-order payments could affect the collective rights of creditors.

[48] The judgment of Hershensohn AJ is significant not because it determines the present return day proceedings, but because it illustrates the nature of the dispute that emerged after the granting of the provisional orders. The learned Judge was required to consider arguments substantially similar to those advanced before this Court,

namely that the subsequent payments had altered the legal position and justified intervention in the insolvency process.

[49] Whilst the findings of Hershensohn AJ are not dispositive of the issues presently before this Court, the judgment underscores the fact that the legal consequences of the post-provisional-order payments have been the subject of extensive judicial consideration. It further highlights the distinction between the payment of a debt and the collective consequences that arise once insolvency proceedings have commenced.

[50] The urgent proceedings therefore form part of the broader procedural history and reinforce the conclusion that the issues before this Court cannot be resolved by reference to ordinary principles governing the discharge of indebtedness alone.

[51] Ultimately, however, this Court is required to determine the return day independently, on the evidence presently before it and in accordance with the applicable principles of insolvency law.

THE INTERVENTION BY SERATIME (PTY) LTD (IN LIQUIDATION):

[52] A significant development in the litigation was the intervention by Seratime (Pty) Ltd (in liquidation). Although the Respondents sought to characterise the proceedings as disputes involving only themselves and the original Applicants, the intervention demonstrates that such a characterisation is incomplete and fails to reflect the broader interests implicated by the insolvency process.

[53] Seratime asserted that it possesses a direct and substantial interest in both the sequestration proceedings and the winding-up proceedings by virtue of its position as a creditor whose rights may be affected by the administration of the respective estates. It contended that the outcome of the return day proceedings would have a direct bearing upon the interests of creditors generally and that it was therefore entitled to participate in the litigation.

[54] The intervention application was not merely procedural in nature. It highlighted an important feature of the present proceedings, namely that they affect parties beyond

the original Applicants and Respondents. The intervention therefore serves as a practical illustration of the collective nature of insolvency proceedings.

[55] Seratime supported the position advanced by the Applicants that the post-provisional-order payments cannot be viewed in isolation from the insolvency framework already established by the provisional orders. According to Seratime, once the provisional sequestration and winding-up orders were granted, the rights of creditors became collective in nature and could no longer be defeated by arrangements concluded with individual creditors after the commencement of the insolvency process.

[56] It was further contended that acceptance of the Respondents' argument would create a situation in which a debtor could effectively terminate insolvency proceedings by satisfying a particular creditor after the rights of creditors had already become fixed. Such a result, according to Seratime, would undermine the fundamental principles upon which insolvency law is based and would create the very risk of preferential treatment which insolvency legislation seeks to avoid.

[57] The Court is of the view that the intervention by Seratime is of considerable significance. It provides a practical demonstration of why insolvency proceedings cannot always be approached solely through the lens of the interests of the original litigants. Once additional creditors possess rights capable of being affected by the administration of an estate, the Court is required to ensure that those interests are not prejudiced by transactions or arrangements concluded after insolvency proceedings have commenced.

[58] The intervention further reinforces one of the central themes running through the Applicants' case, namely that the granting of the provisional orders fundamentally altered the legal landscape and transformed what may once have been a dispute concerning the enforcement of a judgment debt into proceedings concerned with the collective administration of insolvent estates.

[59] The significance of the intervention will become apparent when considering the doctrine of the concursus creditorum and the authorities relied upon by the Applicants. Those authorities repeatedly emphasise that once insolvency proceedings have

commenced, the interests of creditors collectively become paramount and cannot lightly be displaced by private arrangements between individual parties.

PRELIMINARY ISSUES:

[60] Before turning to the substantive legal issues arising for determination, it is necessary to deal with certain preliminary objections raised by the Respondents. Although these objections do not constitute the primary basis upon which the applications were opposed, they nevertheless require consideration because they were relied upon as grounds for refusing the relief sought by the Applicants and the Intervening Creditor.

[61] The first preliminary issue concerns the annexures attached to the affidavits filed in support of the applications and the intervention proceedings. Counsel for the Respondents submitted that a number of annexures attached to the founding affidavits, supplementary affidavits and intervention papers were not initialled by the deponents or commissioners of oaths and that the Court should therefore disregard those annexures when evaluating the evidence.

[62] The objection cannot be upheld.

[63] It is trite that affidavits constitute evidence in motion proceedings and that the proper administration of the oath is not a matter of mere formality. The regulations governing the administration of oaths exist to ensure the authenticity and reliability of evidence placed before a court. Equally, annexures attached to affidavits should be properly identified so as to avoid uncertainty concerning the documents upon which a litigant relies.

[64] The authorities, however, make it clear that not every irregularity in the commissioning process renders an affidavit inadmissible. The enquiry remains whether there has been substantial compliance with the applicable requirements and whether the alleged irregularity has resulted in prejudice or undermined the reliability of the evidence.

[65] In **Swissborough Diamond Mines (Pty) Ltd and Others v Government of the Republic of South Africa and Others**, the Court emphasised the importance of properly identifying documents relied upon in motion proceedings. The purpose of the

requirement is to ensure that documents sought to be incorporated into affidavits are clearly identifiable and that the Court is able to determine precisely what evidence is relied upon by the deponent.

[66] The requirement exists to serve the interests of justice and not to create technical obstacles divorced from questions of substance. The Court must therefore distinguish between defects that affect the reliability or authenticity of evidence and defects which are purely technical in nature.

[67] In the present matter, the Respondents have not alleged that any annexure was fabricated, altered, substituted or otherwise rendered unreliable by the absence of initials. Nor has it been suggested that the annexures before the Court are not the documents intended to be incorporated into the affidavits.

[68] Equally absent is any allegation that the deponents failed to take the prescribed oath, that the affidavits were not properly signed or that the contents of the affidavits were not confirmed under oath. The challenge is directed primarily at technical irregularities relating to the identification of annexures and aspects of the commissioning process.

[69] The Court is satisfied that the affidavits before it substantially comply with the applicable requirements. The annexures are clearly identifiable, their authenticity has not been challenged and no prejudice has been demonstrated. The Respondents have had full opportunity to consider the documents and to answer the case advanced against them.

[70] In these circumstances, the objections raised by the Respondents are essentially technical in nature and do not justify the exclusion of the evidence relied upon by either the Applicants or the Intervening Creditor.

[71] The Court accordingly declines to exclude the affidavits or annexures from consideration.

[72] The second preliminary issue concerns allegations relating to Mr Noordman and the administration of the various estates connected to the present litigation. Counsel for the Respondents submitted that Mr Noordman occupied positions in related insolvency proceedings and that this created an actual or potential conflict of interest which undermined the integrity of the present proceedings.

[73] It was argued that the overlap between the various estates created a situation in which competing interests might arise and that the existence of such a conflict should weigh against the granting of final sequestration and final winding-up orders.

[74] Allegations of conflict of interest in insolvency administration must always be treated seriously. Insolvency practitioners occupy positions of trust and are required to discharge their functions impartially and in the interests of creditors generally. Courts should therefore not lightly dismiss allegations suggesting a departure from those obligations.

[75] The difficulty confronting the Respondents is that the present proceedings are not directed at determining the propriety of Mr Noordman's appointment or conduct. No substantive application has been brought seeking his removal, nor is this Court called upon to adjudicate allegations of professional misconduct or breaches of fiduciary duty.

[76] The evidence before the Court reveals that the issue was recognised by those involved in the administration of the relevant estates and that steps were taken to address any actual or perceived conflict. The intervention papers indicate that arrangements were implemented to ensure that decisions affecting overlapping interests would be dealt with appropriately and, where necessary, by other office bearers.

[77] Of particular significance is the evidence indicating that Mr Noordman undertook to recuse himself from matters in which overlapping interests might arise and that such matters would be dealt with through alternative mechanisms designed to preserve the integrity of the insolvency process.

[78] The Respondents have not placed before the Court evidence demonstrating that those arrangements were inadequate, that actual prejudice resulted or that any conflict affected the validity of the proceedings presently before this Court.

[79] Even if one were to assume the existence of concerns regarding the administration of the estates, those concerns would not alter the jurisdictional requirements for sequestration and winding-up, nor would they negate the findings previously made by Swanepoel J.

[80] The Court is therefore unable to conclude that the allegations concerning Mr Noordman provide any basis for refusing the relief sought in these proceedings.

[81] Having dealt with the preliminary objections, it is now necessary to consider the legal framework applicable to the return day proceedings. It is within that framework that the Respondents' payment defence, the intervention by Seratime and the legal consequences of the post-provisional-order payments must ultimately be evaluated.

THE APPLICABLE LEGAL FRAMEWORK:

[82] The sequestration proceedings are governed principally by the provisions of the Insolvency Act 24 of 1936, whilst the winding-up proceedings fall to be considered within the framework of the Companies Act and the long-established principles regulating the liquidation of insolvent companies and close corporations. Although the statutory sources differ, the underlying objectives of both forms of relief are closely aligned. In each instance, the Court is required to consider not merely the position of the applicant creditor but the interests of creditors collectively and the proper administration of the insolvent estate.

[83] Section 12 of the Insolvency Act provides that a court may grant a final sequestration order if it is satisfied that the applicant has established a liquidated claim against the debtor, that the debtor has committed an act of insolvency or is insolvent and that there is reason to believe that sequestration will be to the advantage of creditors. These requirements are cumulative and each must be satisfied before final relief may be granted.

[84] The principles governing final winding-up are similarly concerned with the existence of indebtedness, insolvency and the interests of creditors. A winding-up order is not granted merely because a debt exists. The remedy exists to ensure the orderly administration of the affairs of a financially distressed entity under the supervision of the Court, the Master and duly appointed liquidators for the benefit of creditors generally.

[85] The present matter, however, raises issues extending beyond the ordinary application of those principles. The central question is whether developments occurring after the granting of provisional sequestration and provisional winding-up

orders justify their discharge or whether the insolvency process should continue to finality.

[86] The answer to that question requires consideration of the legal consequences flowing from the granting of provisional insolvency orders and the effect which such orders have upon the rights of creditors.

[87] The Applicants relied upon a substantial body of authority establishing that once a provisional sequestration or winding-up order has been granted, the nature of the proceedings changes fundamentally. The proceedings cease to concern merely the enforcement of a debt and become proceedings directed at the collective administration of an insolvent estate.

[88] In **Awerbuch, Brown and Co Ltd v Le Grange** 1939 OPD 20, the Court recognised that insolvency proceedings serve purposes extending beyond the enforcement of an individual debt and that the administration of an insolvent estate must ultimately occur with due regard to the interests of creditors generally. Whilst the facts of that matter differ from those presently before this Court, the decision illustrates the longstanding recognition within South African insolvency law that sequestration proceedings are concerned with collective rather than purely individual interests.

[89] Similar principles emerge from **Cohen v Jacobs (Stand 675 Dowerglen) (Pty) Ltd** (Intervening) and Another, where the Court emphasised that once the rights of additional creditors become implicated, the proceedings assume a collective character which transcends the interests of the original litigants.

[90] Similar considerations emerge from **Commissioner, South African Revenue Service v Hawker Air Services (Pty) Ltd; Commissioner, South African Revenue Service v Hawker Aviation Partnership and Others** 2006 (4) SA 292 (SCA). Although the case did not concern the effect of post-sequestration payments or the consequences of payments made after the establishment of a concursus creditorum, the Supreme Court of Appeal emphasised the importance of insolvency principles in circumstances where the rights of creditors and the administration of insolvent estates are implicated. The decision illustrates the broader principle that insolvency proceedings cannot always be analysed solely through the prism of the interests of individual litigants.

[91] These authorities provide the backdrop against which the doctrine of the concursus creditorum must now be considered.

THE DOCTRINE OF THE CONCURSUS CREDITORUM:

[92] The doctrine of the concursus creditorum lies at the very heart of the present dispute. Indeed, the principal disagreement between the parties concerns whether the payments made after the granting of the provisional sequestration and provisional winding-up orders were capable of extinguishing the legal consequences that had already arisen upon the commencement of the insolvency process.

[93] South African insolvency law has, for more than a century, recognised that the granting of a sequestration order or winding-up order fundamentally alters the legal relationship between a debtor and his or her creditors. The consequence of such an order is the creation of a concursus creditorum, namely a collective process through which the affairs of the insolvent estate are administered for the benefit of creditors generally.

[94] The foundational authority remains **Walker v Syfret NO** 1911 AD 141. In that matter, Innes JA explained that the effect of a sequestration order is to establish a concursus creditorum and to require that the interests of creditors be considered collectively rather than individually. The learned Judge of Appeal observed that once insolvency intervenes, the hand of the law is laid upon the estate and the rights of creditors must thereafter be determined in accordance with the statutory insolvency regime.

[95] The significance of **Walker v Syfret** cannot be overstated. The principle articulated by Innes JA has remained a cornerstone of South African insolvency law and continues to inform the approach adopted by courts when considering transactions occurring after insolvency proceedings have commenced.

[96] The rationale underlying the doctrine is both practical and principled. Insolvency legislation seeks to prevent a race amongst creditors and to ensure that creditors are treated according to an orderly and coherent statutory framework. If individual creditors were permitted to obtain advantages after insolvency proceedings had

commenced, the equality sought to be achieved by insolvency law would be undermined and the administration of insolvent estates would become unworkable.

[97] The doctrine therefore serves as a mechanism for protecting creditors collectively. It ensures that the administration of the estate is conducted in an orderly fashion under judicial supervision and that individual creditors do not obtain preferences inconsistent with the statutory scheme.

[98] The Applicants also relied upon **Pride Milling Co (Pty) Ltd v Bekker NO and Another** 2022 (2) SA 410 (SCA). That matter concerned the validity of dispositions occurring after the commencement of winding-up proceedings and the operation of section 341(2) of the Companies Act.

[99] Although *Pride Milling* arose in a different context, the decision illustrates the broader principle that once insolvency proceedings have commenced, transactions occurring thereafter cannot automatically be assessed according to ordinary commercial principles. The commencement of insolvency proceedings introduces collective considerations which may affect the validity and consequences of subsequent transactions and requires the Court to consider the interests of creditors generally.

[100] Similar considerations informed the decision in **Corruseal Corrugated KZN (Pty) Ltd v Zakharov and Another** [2023] ZAWCHC 48. There the Court reiterated the importance of preserving the integrity of the concursus creditorum and cautioned against approaches that would permit private arrangements to undermine the collective rights of creditors.

[101] The authorities therefore reveal a consistent and coherent principle. Once a concursus creditorum has come into existence, the focus of the law shifts away from the bilateral relationship between debtor and creditor and towards the collective rights of creditors as a body.

[102] This principle has particular significance in the present matter. By the time the payments relied upon by the Respondents were made, the provisional sequestration order and the provisional winding-up order had already been granted. The insolvency process had therefore already commenced and the collective rights of creditors had already arisen.

[103] The Respondents nevertheless contend that the payments extinguished the indebtedness which formed the foundation of the proceedings and that the Applicants consequently ceased to possess standing to pursue insolvency relief. According to this argument, the payment of the debt effectively restored the parties to the position they occupied before the granting of the provisional orders.

[104] In my view, that submission cannot be reconciled with the authorities discussed above. Once the provisional orders were granted, the legal position changed fundamentally. The proceedings ceased to concern only the Applicants and the Respondents and became proceedings directed at the administration of the respective estates for the benefit of creditors generally.

[105] The intervention by Seratime provides a practical illustration of this principle. The proceedings are no longer confined to the interests of the original Applicants. Additional creditors have asserted rights which may be affected by the outcome of the litigation. That fact alone demonstrates why the Court cannot evaluate the matter solely through the lens of the original judgment debt.

[106] The Respondents' argument effectively invites the Court to ignore the legal consequences flowing from the granting of the provisional orders and to treat the proceedings as though they remained ordinary debt collection proceedings. Such an approach is inconsistent with both principle and authority.

[107] If the Court were to accept that payment made after the establishment of a concursus creditorum automatically extinguishes insolvency proceedings, the consequences would be profound. Debtors would be able to defeat insolvency proceedings after their commencement by arranging payment to selected creditors. The collective rights of creditors would become vulnerable to private arrangements concluded outside the statutory framework and the orderly administration of insolvent estates would be jeopardised.

[108] Such a result would undermine the very purpose of the concursus creditorum. It would permit individual creditors to secure advantages not available to creditors generally and would create opportunities for preferential treatment inconsistent with the principles upon which insolvency law is founded.

[109] The Court is therefore satisfied that the Respondents' payment defence cannot be evaluated according to ordinary principles governing the discharge of indebtedness. The legal significance of the payments must instead be considered within the broader framework of insolvency law and with due regard to the collective rights that arose upon the granting of the provisional orders.

[110] This conclusion does not mean that the payments are irrelevant. They plainly constitute a relevant consideration. Their significance, however, must be assessed in a manner consistent with the principles governing the concursus creditorum and the collective administration of insolvent estates.

[111] It is against this legal framework that the Respondents' payment defence falls to be considered.

THE RESPONDENTS' PAYMENT DEFENCE:

[112] The principal defence advanced by the Respondents on the return day is that the indebtedness upon which the sequestration and winding-up proceedings were founded has been extinguished through payment and that the continuation of the insolvency process can therefore no longer be justified.

[113] According to the Respondents, the payments made after the granting of the provisional orders exceeded the amount necessary to satisfy the judgment debt and included both capital and accrued interest. It was therefore argued that the debt which formed the foundation of the proceedings no longer exists and that the Applicants ceased to be creditors upon receipt of those monies.

[114] The Respondents further contend that once the Applicants ceased to be creditors, they no longer possessed the standing necessary to pursue insolvency relief. It was submitted that the proceedings should therefore be dismissed and the provisional orders discharged.

[115] At first glance there is a superficial attraction to this argument. In ordinary commercial litigation, payment of a debt will ordinarily extinguish the obligation and deprive a creditor of any continuing cause of action. The difficulty confronting the

Respondents, however, is that the present proceedings are not ordinary commercial litigation.

[116] By the time the payments relied upon by the Respondents were made, the provisional sequestration and winding-up orders had already been granted. The rights of creditors had already become fixed and the insolvency process had already commenced.

[117] The legal consequences flowing from those developments cannot simply be ignored. The Court is required to determine not merely whether payment occurred, but whether those payments are legally capable of defeating the collective rights that had already arisen upon the granting of the provisional orders.

[118] For the reasons that follow, I am unable to conclude that they are.

THE SOURCE OF THE FUNDS AND THE DOCTRINE OF SEPARATE LEGAL PERSONALITY:

[119] Recognising the difficulties created by the doctrine of the *concursum creditorum*, the Respondents advanced a further argument based upon the source of the funds utilised to make the post-provisional-order payments. It was submitted that the monies paid into the trust account of the Applicants' attorneys did not originate from either Ms Mpakati or Indalo Business Consulting CC but from entities possessing legal personality separate and distinct from that of the Respondents.

[120] According to the Respondents, this fact is decisive. It was argued that because the payments originated from independent entities, they constituted lawful third-party payments which extinguished the indebtedness and rendered the continuation of the insolvency proceedings unnecessary.

[121] The Court accepts, as a matter of general principle, that companies and close corporations possess legal personality separate from that of their shareholders, members and controllers. The doctrine of separate legal personality is one of the foundational principles of South African company law and serves important commercial purposes. Equally, there is no legal impediment preventing a third party from discharging the indebtedness of another.

[122] The issue before this Court, however, is not whether a third party may lawfully satisfy the debt of another. Nor is the issue whether the entities from which the funds originated possess separate legal personality. The real issue is whether the existence of separate legal personality is capable of defeating the collective rights that arose upon the granting of the provisional sequestration and provisional winding-up orders.

[123] In my view, it is not.

[124] Even if one accepts the Respondents' version at its highest and assumes that every cent utilised to make the payments originated from entities entirely separate from Ms Mpakati and Indalo Business Consulting CC, the central difficulty remains unchanged. The payments were made only after the provisional sequestration order and the provisional winding-up order had already been granted.

[125] By that stage, the rights of creditors had already become fixed. The insolvency process had already commenced. The administration of the respective estates had already become subject to the supervision of the Court and the statutory insolvency framework.

[126] The Court must therefore consider not merely the source of the funds but the legal consequences of the payments within the insolvency regime already established. To focus exclusively upon the source of the funds would be to elevate form above substance and to ignore the collective rights that had already arisen.

[127] Were the Respondents' argument to be accepted, the consequences would be far-reaching. It would mean that debtors could circumvent insolvency proceedings by arranging for associated entities, family members, business associates or related companies to satisfy selected creditors after the commencement of insolvency proceedings. Such a result would substantially undermine the protections afforded to creditors by insolvency legislation.

[128] It would further erode the principle of equality amongst creditors and undermine the certainty which the doctrine of the *concursum creditorum* seeks to achieve. Insolvency law is designed to ensure that creditors are treated according to an orderly statutory process and not according to arrangements concluded after insolvency proceedings have commenced.

[129] The Court is therefore satisfied that the doctrine of separate legal personality does not alter the legal consequences flowing from the granting of the provisional orders. The identity of the entity from which the funds originated cannot, without more, determine whether the provisional sequestration order and the provisional winding-up order should be discharged.

[130] The Respondents' reliance upon the source of the funds accordingly does not provide a basis for refusing final relief.

FACTUAL INSOLVENCY:

[131] Having concluded that the payment defence cannot be sustained on the basis advanced by the Respondents, it becomes necessary to consider whether the evidence establishes factual insolvency and whether the remaining requirements for final relief have been satisfied.

[132] Although the Applicants rely primarily upon the judgment debt, the nulla bona return and the findings made by Swanepoel J, they further contend that the evidence demonstrates factual insolvency on the part of both Respondents.

[133] The Respondents dispute that contention and rely upon the existence of assets which, according to them, demonstrate solvency and render the continuation of the insolvency proceedings unnecessary.

[134] The enquiry into factual insolvency requires the Court to determine whether the liabilities of a debtor exceed the value of his, her or its assets. Whilst the existence of assets is relevant, the mere assertion that assets exist does not establish solvency. The Court must be placed in a position to evaluate the overall financial position of the debtor by reference to reliable evidence.

[135] In the present matter, the Respondents have not furnished the Court with comprehensive financial disclosure demonstrating conclusively that their assets exceed their liabilities. Whilst reliance was placed upon certain assets and business interests, the Court was not provided with complete financial statements, audited balance sheets or a comprehensive reconciliation of assets and liabilities.

[136] This omission assumes significance because the Respondents possess peculiar knowledge of their own financial affairs and would ordinarily be expected to place such information before the Court if solvency constituted the principal basis upon which final relief was opposed.

[137] The absence of comprehensive financial disclosure must be considered together with the judgment debt, the unsuccessful execution process, the nulla bona return and the findings already made by Swanepoel J. Viewed cumulatively, these factors point towards financial distress rather than financial stability.

[138] The Court is mindful that factual insolvency must ultimately be determined upon a consideration of all the available evidence. In the present matter, however, the objective indicators relied upon by the Applicants remain largely unanswered. The judgment debt remains a matter of record. The nulla bona return remains unexplained. The findings previously made by Swanepoel J remain operative.

[139] Furthermore, the Respondents' own reliance upon third-party funding to satisfy the judgment debt does not sit comfortably with their assertion of financial strength. Whilst such funding may be lawful, it nevertheless raises questions concerning the availability of sufficient resources within the estates themselves.

[140] The Court is accordingly satisfied that the evidence establishes factual insolvency on a balance of probabilities and that this requirement for final relief has been met.

ADVANTAGE TO CREDITORS:

[141] One of the essential requirements for the granting of a final sequestration order is that there must be reason to believe that sequestration will be to the advantage of creditors. Although this requirement arises expressly from section 12 of the Insolvency Act, similar considerations apply in liquidation proceedings where the Court must be satisfied that the continuation of the insolvency process serves a legitimate purpose and is capable of yielding some benefit to creditors.

[142] The Respondents submitted that no such advantage exists in the present matter because the judgment debt which gave rise to the proceedings has already been paid.

According to this argument, there is no longer any practical benefit to be achieved through the continued administration of the estates.

[143] This submission overlooks the well-established principles governing the concept of advantage to creditors.

[144] In **Trust Wholesalers and Woollens (Pty) Ltd v Mackan** 1954 (2) SA 109 (N), the Court emphasised that an applicant is not required to demonstrate with certainty that creditors will ultimately receive a dividend. It is sufficient if there is reason to believe that sequestration may result in some pecuniary benefit to creditors.

[145] Similarly, in **Ex parte Pillay** 1955 (2) SA 309 (N), the Court recognised that the investigative powers conferred upon trustees and liquidators may themselves constitute an advantage to creditors. The purpose of insolvency legislation is not confined to the immediate collection of debts. It extends to the investigation of the debtor's affairs, the identification of assets and the recovery of claims for the benefit of creditors generally.

[146] The Constitutional Court reaffirmed these principles in **Stratford and Others v Investec Bank Ltd and Others** 2015 (3) SA 1 (CC). The Court recognised that sequestration proceedings serve broader purposes than the recovery of a specific debt and that the investigative and administrative machinery established by insolvency legislation may itself justify the granting of insolvency relief where there exists a reasonable prospect of benefit to creditors.

[147] The present matter provides a compelling illustration of those principles. Significant uncertainty remains concerning the source of the funds utilised to make the post-provisional-order payments, the relationship between the various entities involved and the movement of substantial sums of money after the granting of the provisional orders.

[148] The findings previously made by Swanepoel J concerning the absence of objective evidence supporting the alleged IDC arrangement further demonstrate that unresolved questions remain regarding the financial affairs of the Respondents. Those questions are precisely the type of issues which insolvency legislation contemplates should be investigated through the mechanisms available to trustees and liquidators.

[149] The intervention by Seratime provides additional support for this conclusion. The existence of another creditor confirms that the proceedings affect interests beyond those of the original Applicants and reinforces the need for collective administration and proper investigation.

[150] The Court is not required at this stage to determine whether such investigations will ultimately reveal additional assets or recoverable claims. The law does not require such certainty. It is sufficient that there exists a reasonable basis for believing that continued administration of the estates may yield information, assets or claims capable of benefiting creditors.

[151] When all the circumstances are considered cumulatively, the prospect of benefit to creditors is considerably more than speculative. The evidence establishes a substantial basis for concluding that the continuation of the insolvency process may produce meaningful advantages for creditors generally.

[152] I am accordingly satisfied that the requirement of advantage to creditors has been established in respect of both the sequestration proceedings and the winding-up proceedings.

LOCUS STANDI:

[153] The Respondents further contend that the Applicants lost their standing to pursue the present proceedings once payment was made into the trust account of their attorneys. According to this argument, the Applicants ceased to be creditors and therefore ceased to possess the legal standing necessary to seek confirmation of the provisional sequestration and provisional winding-up orders.

[154] The submission cannot be sustained.

[155] The argument proceeds from the premise that the legal position remained unchanged after the granting of the provisional sequestration and provisional winding-up orders. For reasons already explained, that premise is inconsistent with the doctrine of the concursus creditorum and the legal consequences flowing from the commencement of insolvency proceedings.

[156] At the time the provisional orders were granted, the Applicants were unquestionably creditors possessing liquidated claims against the Respondents. Their standing to institute and pursue the proceedings was never in doubt.

[157] Once the provisional orders were granted, the rights flowing from those claims became fixed within the framework of the concursus creditorum. The proceedings ceased to concern only the interests of the Applicants and the Respondents and became proceedings affecting the rights of creditors generally.

[158] The intervention by Seratime provides a practical illustration of this principle. Even if the Applicants' claims had been satisfied in full, the interests of other creditors would remain relevant and could not simply be disregarded.

[159] The Respondents' argument overlooks the fact that insolvency proceedings are not maintained solely for the benefit of the original applicant creditor. Once the insolvency process has commenced, the Court must consider the interests of creditors collectively and ensure that those interests are not prejudiced by subsequent arrangements concluded between individual parties.

[160] Furthermore, disputes remained concerning the treatment of the post-provisional-order payments, the source of the funds utilised to make those payments, the administration of the respective estates and the interests of creditors other than the Applicants. The suggestion that every issue affecting the estates disappeared merely because payment was made to the Applicants is inconsistent with both the evidence and the principles governing insolvency law.

[161] Were the Respondents' argument to be accepted, it would permit debtors to defeat insolvency proceedings after the establishment of a concursus creditorum simply by satisfying the claims of selected creditors. Such an approach would undermine the collective nature of insolvency administration and create opportunities for preferences inconsistent with the statutory scheme.

[162] The Court is accordingly satisfied that the Applicants did not lose locus standi by virtue of the payments relied upon by the Respondents and that they remain entitled to seek confirmation of the provisional sequestration order and the provisional winding-up order.

THE FINAL WINDING-UP OF INDALO BUSINESS CONSULTING CC:

[163] Although many of the legal principles applicable to the winding-up proceedings overlap with those applicable to the sequestration proceedings, it remains necessary to consider separately whether the provisional winding-up order granted against Indalo Business Consulting CC should be confirmed.

[164] The Court is mindful that a winding-up order is not granted merely because a debt exists. Liquidation proceedings are not intended to serve as ordinary debt collection mechanisms. Their purpose is to ensure the orderly administration of the affairs of an insolvent company or close corporation under the supervision of the Court, the Master and duly appointed liquidators for the benefit of creditors generally.

[165] In **Absa Bank Ltd v Rhebokskloof (Pty) Ltd and Another** 1993 (4) SA 436 (C), the Court recognised that liquidation proceedings serve broader purposes than the enforcement of individual debts. Once liquidation proceedings are justified, the Court must consider the collective interests of creditors and the need for proper administration of the affairs of the entity concerned.

[166] The evidence before this Court demonstrates that the Applicants obtained judgment against Indalo Business Consulting CC jointly and severally with Ms Mpakati. That judgment remained unsatisfied, execution proved unsuccessful and a nulla bona return was obtained. These facts formed the foundation upon which the provisional winding-up order was granted.

[167] The significance of those facts has not diminished merely because payments were subsequently made after the granting of the provisional order. The Court must consider the legal consequences of those payments within the framework of insolvency law and not in isolation from the circumstances that gave rise to the winding-up proceedings.

[168] The Respondents contend that the subsequent payments removed the foundation for the continuation of the liquidation process. According to this argument, once the debt was paid there remained no purpose to be served by the winding-up of Indalo Business Consulting CC.

[169] In my view, that argument suffers from the same fundamental difficulty identified in relation to the sequestration proceedings. It proceeds upon the assumption that the

liquidation proceedings remained ordinary debt enforcement proceedings even after the granting of the provisional winding-up order.

[170] That assumption is inconsistent with established insolvency principles. Once a provisional winding-up order has been granted, the matter ceases to concern only the relationship between a debtor and a creditor. The interests of creditors generally become paramount and the affairs of the company become subject to a collective process of administration.

[171] In **Afgri Operations Ltd v Hamba Fleet (Pty) Ltd** 2022 (1) SA 91 (SCA), the Supreme Court of Appeal reaffirmed the importance of collective insolvency processes and emphasised that courts must remain astute to protect the interests of creditors generally rather than permitting individual arrangements to undermine the statutory scheme.

[172] Similar considerations informed the decision in **Ullman Sails (Pty) Ltd and Others v Jannie Reuvers Sails (Pty) Ltd and Others** [2022] 3 All SA 290 (WCC), where the Court stressed the importance of preserving the integrity of insolvency proceedings and ensuring that creditors are treated in accordance with the collective framework established by law.

[173] These authorities support the proposition that once liquidation proceedings have commenced, the Court must be cautious not to permit transactions occurring thereafter to undermine the collective interests that have already arisen.

[174] The intervention by Seratime demonstrates precisely why that principle is important in the present matter. The liquidation proceedings affect parties beyond the original Applicants and Respondents. The existence of an additional creditor illustrates that the proceedings cannot properly be reduced to a dispute concerning the satisfaction of a single debt.

[175] The Court must therefore guard against an approach which would permit the liquidation process to be defeated through arrangements concluded after the commencement of insolvency proceedings. To do otherwise would create opportunities for preferential treatment and would undermine the collective nature of liquidation proceedings.

[176] Furthermore, unresolved questions remain concerning the source of the funds utilised to make the post-provisional-order payments, the relationship between the various entities involved and the broader financial arrangements which gave rise to the disputes presently before the Court.

[177] Insolvency legislation contemplates that questions of this nature should be investigated through the machinery of liquidation. The appointment of liquidators provides a mechanism through which the affairs of the company may be scrutinised, transactions investigated and potential claims identified and pursued for the benefit of creditors.

[178] The Applicants further referred to litigation arising from the liquidation of **VBS Mutual Bank** as an illustration of the importance of proper investigation and administration within insolvency proceedings. Whilst the factual circumstances of those matters differ materially from those presently before this Court and they are not directly determinative of the issues before me, they serve as a reminder of the important role performed by insolvency practitioners in investigating financial affairs and protecting the interests of creditors.

[179] The Court is therefore satisfied that the continuation of the liquidation process serves a legitimate and important purpose independent of the original judgment debt. The winding-up proceedings remain necessary to ensure the proper administration of the affairs of Indalo Business Consulting CC and the protection of creditors generally.

[180] I am accordingly satisfied that the Applicants have established grounds for the confirmation of the provisional winding-up order and that Indalo Business Consulting CC should be placed under final winding-up.

THE COURT'S DISCRETION:

[181] Even where the jurisdictional requirements for sequestration or winding-up have been established, the Court retains a discretion whether to grant final relief. That discretion must be exercised judicially and with due regard to the purposes of insolvency legislation, the interests of justice and the rights of creditors generally.

[182] The Respondents submitted that the Court should exercise its discretion in their favour because the judgment debt has been paid and because the continuation of the insolvency proceedings would therefore serve no useful purpose.

[183] Whilst the payment of a debt is undoubtedly a relevant consideration, it is not necessarily decisive where the payment occurs after the establishment of a concursus creditorum and after the commencement of collective insolvency proceedings.

[184] The Court must consider the broader consequences of bringing the insolvency process to an end. It must consider not only the position of the original parties but also the interests of creditors generally, the integrity of the insolvency process and the unresolved issues that remain concerning the affairs of the estates.

[185] In the present matter, those considerations weigh heavily in favour of the continuation of the insolvency process. The intervention by Seratime, the disputes concerning the source of funds, the findings previously made by Swanepoel J, the proceedings before Hershensohn AJ and the absence of comprehensive financial disclosure all point towards the need for continued administration and investigation.

[186] Even if the Court were to accept that the judgment debt has now been satisfied in full, that fact would not compel the discharge of the provisional sequestration and winding-up orders. By the time payment occurred, the rights of creditors had already become fixed and the insolvency process had already commenced.

[187] To discharge the provisional orders solely on the basis of those payments would be inconsistent with the principles discussed earlier in this judgment and would risk undermining the collective nature of insolvency administration.

[188] The Court is therefore satisfied that its discretion should be exercised in favour of confirming the provisional orders rather than discharging them.

EVALUATION OF THE EVIDENCE:

[189] Having considered the founding affidavits, answering affidavits, replying affidavits, supplementary affidavits, supplementary heads of argument, the intervention proceedings, the urgent proceedings before Hershensohn AJ, the

judgment of Swanepoel J and the submissions advanced by counsel, it is necessary to evaluate the evidence as a whole.

[190] The Respondents' opposition ultimately rests upon four propositions. The first is that the indebtedness was paid after the granting of the provisional orders. The second is that the payments originated from entities possessing legal personality separate from that of the Respondents. The third is that insolvency administration is no longer necessary. The fourth is that the Applicants consequently lost standing to pursue the proceedings.

[191] For the reasons already set out in this judgment, those propositions cannot be sustained when viewed against the principles governing insolvency law and the evidence before the Court.

[192] The Applicants have established the existence of a valid judgment debt. They have established acts of insolvency through the execution process and the findings previously made by Swanepoel J. They have demonstrated factual insolvency, advantage to creditors and the continued necessity for insolvency administration.

[193] The Applicants have further succeeded in answering the Respondents' contentions concerning payment, separate legal personality and locus standi. Those defences, whether considered individually or cumulatively, do not justify the discharge of the provisional orders.

[194] The intervention by Seratime provides further support for the continuation of the insolvency process and demonstrates that the proceedings affect a broader body of creditors than the original Applicants alone.

[195] The Court is accordingly satisfied that the Applicants have discharged the onus resting upon them and that the requirements for final sequestration and final winding-up have been established.

CONCLUSION:

[196] The cumulative effect of the evidence and the applicable legal principles is compelling. The provisional sequestration order granted against Ms Mpakati and the provisional winding-up order granted against Indalo Business Consulting CC were

granted after careful consideration by Swanepoel J of the parties' competing versions, the judgment debt, the unsuccessful execution process and the legal requirements governing insolvency relief.

[197] The Respondents' opposition on the return day rests primarily upon the proposition that the indebtedness which gave rise to the insolvency proceedings has been extinguished through payments made after the granting of the provisional orders. Whilst the Court accepts that substantial payments were made, that fact does not conclude the enquiry.

[198] The authorities relied upon by the Applicants consistently demonstrate that once a concursus creditorum has come into existence, the rights of creditors become fixed and the proceedings assume a collective character. The focus of the law shifts away from the bilateral relationship between debtor and creditor and towards the protection of creditors as a body.

[199] Having regard to the judgment debt, the nulla bona return, the findings of Swanepoel J, the subsequent proceedings before Hershensohn AJ, the intervention by Seratime, the extensive affidavits filed by the parties and the authorities relied upon by the Applicants, I am satisfied that the requirements for final sequestration and final winding-up have been established.

[200] The post-provisional-order payments relied upon by the Respondents do not extinguish the collective rights that arose upon the establishment of the concursus creditorum, do not undermine the interests of creditors generally and do not justify bringing the insolvency process to an end.

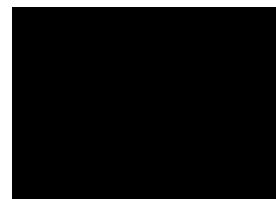
[201] The Applicants have demonstrated the existence of indebtedness, acts of insolvency, factual insolvency, advantage to creditors and the continued necessity for collective insolvency administration. The Respondents have failed to establish any basis upon which the provisional orders should be discharged.

[202] The Court's discretion falls to be exercised in favour of confirming the provisional sequestration order and the provisional winding-up order.

ORDER:

In the result, the following order is made:

1. The rule nisi issued in the winding-up proceedings is confirmed.
2. Indalo Business Consulting CC is placed under final winding-up.
3. The rule nisi issued in the sequestration proceedings is confirmed.
4. The estate of Lebogang Grace Mpakati is placed under final sequestration in the hands of the Master of the High Court.
5. The costs of the winding-up application, including the costs of the return day, the intervention proceedings, the supplementary affidavits and all related proceedings, shall be costs in the winding-up of Indalo Business Consulting CC.
6. The costs of the sequestration application, including the costs of the return day, the intervention proceedings, the supplementary affidavits and all related proceedings, shall be costs in the sequestration of the estate of Lebogang Grace Mpakati.



L J MBOWENI AJ

**ACTING JUDGE OF THE
HIGH COURT ,GAUTENG
DIVISION, PRETORIA**

Date of Hearing : 12 May 2026

Date of Judgment : 10 June 2026

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