IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION: JOHANNESBURG

CASE NO: 2026-044509

(1)	REPORTABLE: ~~YES~~ / NO
(2)	OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO
(3)	REVISED: YES / ~~NO~~
19 June 2026 DATE	[redacted] SIGNATURE

In the application:

PLANTCOR MINING AND PLANT HIRE (PTY) LTD — Applicant

and

HORIZON CHROME MINE (PTY) LTD — First respondent
[in business rescue]
(Reg. no. 2015/057037/07)

<u>PEMA</u>; JAYANT DAJI — Second respondent

<u>CASSIM</u>; ZAHEER — Third respondent

THE COMPANIES AND INTELLECTUAL PROPERTIES COMMISSION — Fourth respondent

ALL AFFECTED PERSONS — Fifth respondent

BRIGHT MINERALS SA (PTY) LTD — First intervening party / sixth respondent

NATIONAL UNION OF MINEWORKERS — Second intervening party / seventh respondent

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JUDGMENT

AMM, AJ

A. Introduction

[1] This application was called before me, and accommodated, in the Dedicated Insolvency Motion Court on its urgent roll. There are many parts to this application. They include the main application by Plantcor Mining and Plant Hire (Pty) Ltd ('Plantcor') for urgent interim interdictory relief, and two intervention applications.

[2] Horizon Chrome Mine (Pty) Ltd [in business rescue] ('Horizon') is the first respondent. Horizon's two business rescue practitioners are the second and third respondents ('the practitioners').

[3] In its application, Plantcor seeks relief, in the main and in broad terms, interdicting the implementation of the outcome of a 2 February 2026 creditors' vote in Horizon's business rescue. The second intervening party, being National Union of Mineworkers ('NUM') joins cause with Plantcor. It seeks to leave intervene in Plantcor's application in order to support Plantcor, and protect the interests of its members.

[4] Horizon and the practitioners vigorously oppose Plantcor's application. The first intervening party, being Bright Minerals SA (Pty) Ltd ('Bright Minerals') stands with Horizon and the practitioners. Bright Minerals seeks to leave intervene in Plantcor's application in support of their opposition to Plantcor's application,

[5] When the dust and smoke that ordinarily occupies a complex and voluminous application such as this settles, it becomes apparent that the central disputes in Plantcor's application reside at the intersection of two parallel processes. The first concerns the pending 'adjudication' (actually expert determination[1]) of Plantcor's disputed post-commencement

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[1] The process is referred to in the papers as an 'adjudication'. This is not strictly correct because the adopted business rescue plan, in its clause 7.5 'dispute resolution' provisions, provides for

finance ('PCF') claim in Horizon's business rescue (discussed below). Plantcor contends that the expert determination may significantly alter the creditor landscape within Horizon's business rescue. The second concerns the fact, outcome and the implementation of the vote at the 2 February 2026 creditors' meeting.

[6] The accompanying or underlying factual and legal disputes focus on, and traverse, creditor rights, the status of the 2 February 2026 creditors' meeting, voting legitimacy, transparency, and the relationship, if any, between the business rescue plan, Plantcor's pending PCF determination, and the sale processes.

[7] Pursuant to my direction at the commencement of the hearing, the parties were invited to address and argue all issues and aspects of the application and intervention applications on the basis that a final determination of Bright Minerals' and NUM's intervention applications would be made in due course. The invitation's purpose was to consolidate, streamline and expediate the argument and hearing. The parties agreed and the argument proceeded on this basis.

B. Relevant factual background and matrix

[8] Set out below, as briefly and succinctly as possible, is the background that informs this matter. It starts with Horizon being the holder of mining rights over, and engaged in mining operations at, portions of the farms Rhuighoek 169 JP and Vogelstruisnek 173 JP in the North West Province.

[9] On 26 July 2018, Horizon was placed under court order business rescue. As already mentioned, the second and third respondents are Horizon's duly appointed business rescue practitioners (i.e. 'the practitioners').

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inter-alia disputes on the existence and quantum of creditor claims to be submitted to Mr. *Swart SC* ówho shall determine the dispute as an expertô

[10] Following the practitioners' appointment, various business rescue plans for Horizon have been adopted, culminating in what can be labelled as a Third Revised Business Rescue Plan, published during February 2021 and adopted during March 2021 ('the adopted business rescue plan').[2]

[11] The adopted business rescue plan contemplates the realisation and sale of Horizon's assets, business and/or shares (individually or collectively). Clause 5.3.2 of the adopted business rescue plan authorises the practitioners to market and sell, 'in their sole discretion', Horizon's assets by private treaty or public auction, subject to certain conditions.[3]

[12] Equally importantly, clause 7.5 of the adopted business rescue plan provides for an agreed dispute resolution process should a dispute arise regarding the existence and quantum of creditor claims in Horizon's business rescue. The clause provides that these disputes are to be submitted for expert determination to Mr. *Swart SC*.

[13] The available evidence demonstrates that Horizon experienced significant operational and financial difficulties prior to Plantcor's involvement. The mine had ceased trading operations, been non-operational since 2020, and its infrastructure had deteriorated. The mine and its assets were also vulnerable to vandalism.

[14] Consequently, Plantcor and Horizon (represented by the practitioners) concluded a Memorandum of Agreement. They did so during September 2021. Plantcor was appointed to restore the mine to a compliant and operational condition, and to conduct mining operations. Plantcor thus undertook extensive remedial work at the mine and underground development. It refurbished and replaced mining equipment, it rehabilitated

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2 There is reference in papers to an addendum to the business rescue plan, but that the addendum has not yet been approved / adopted by creditors terms of section 152 of the Companies Act, 2008.

3 These include the consent of the secured creditors if the proceeds of the sale will be insufficient to settle the full extent of a secured creditor's claim; and a minimum aggregate purchase price value of R180 million.

infrastructure, restored utilities, implemented a health and safety system, and it re-established mining operations.

[15] Plantcor asserts that its interventions materially enhanced the value of the mine and enabled the resumption of mining operations. In this regard, Plantcor states that it advanced PCF for the benefit of Horizon of some approximately R200,6 million, comprising capital expenditure of R146.5 million, mine development costs of approximately R53.1 million, and legal costs of approximately R941,000.00. Plantcor contends that the value now sought to be realised through the proposed sale process is largely attributable to Plantcor's PCF and its interventions.

[16] During October 2024, the practitioners approved Plantcor's PCF claim in an amount of some R60.4 million. The balance of Plantcor's PCF claim is disputed, and has been referred for determination before Mr. *Swart SC*. In essence, Horizon and the practitioners that these costs are Plantcor's costs incurred for Plantcor's benefit while it operated the mine.

[17] Plantcor contends that the outcome of the *Swart SC* proceedings is of considerable significance because, if Plantcor is successful, its ranking and voting rights as a Horizon creditor, and the ultimate distribution to creditors in Horizon's business rescue, will be materially affected.

[18] Taking a brief step back in time, the practitioners continued to pursue a sale of Horizon's assets during 2024 and 2025 in accordance with the adopted business rescue plan. The practitioners regularly updated creditors about their efforts and their progress, and also that various sale and disposal options were being considered. For example, at a 9 May 2025 creditors' meeting, the practitioners reported receiving two non-binding expressions of interest in the approximate amounts of R440 million and R400 million. At a subsequent meeting on 12 June 2025, the practitioners informed creditors that market interest in the mine had increased and that favourable chrome market conditions had generated

additional interest from potential purchasers, and that they would continue to explore sale and disposal options.

[19] For its part, Plantcor submitted a written offer on 24 July 2025 of some R280 million to purchase the mine and its assets as a going concern. Plantcor's offer was accompanied by its indicated willingness to waive a substantial component of its disputed PCF claim. Plantcor contends that its offer was binding, commercially viable and beneficial to creditors. Plantcor's offer was not accepted, and lapsed in September 2025.

[20] The practitioners regarded Plantcor's offer as being too low within the context of the aforesaid R440 million and R400 million offers. Plantcor's riposte is that there was no meaningful engagement concerning terms of its offer and that its offer was never properly presented to or considered by creditors at any meeting.

[21] On 17 October 2025, the practitioners invited interested parties, including Plantcor, to submit or resubmit offers for Horizon's mining assets, together with proof of funding, by no later than 4 November 2025. Plantcor failed to submit a revised offer by the stipulated 4 November 2025 deadline.

[22] In fact, at a December 2025 meeting between Plantcor representatives and representatives of the practitioners, Plantcor advised that it did not intend to pursue the purchase of the mine. Additionally, Plantcor did not submit resubmit in the revised offer prior to the 2 February 2026 creditors' meeting.

[23] Turning now to the all-important 2 February 2026 creditors' meeting. The practitioners convened the meeting. The practitioners presented only two short-listed offers received from prospective purchasers to the meeting (referred to as 'bidders').

[24] The two 'bidders' were not identified. Bidder A's offer was in an amount of approximately R310 million. Bidder B's' offer was approximately R300 million.

[25] The practitioners called for a preference vote at the 2 February 2026 creditors' meeting in respect of the two bidders and their respective offers. The voting process entailed a binary choice (i.e. a vote for Bidder A or Bidder B only). The voting did not include to vote to reject both bids, and also not for the vote to be deferred.

[26] When Plantcor sought to revive its offer at or after the meeting, it was informed that no further offers would be accepted and that Plantcor could not be provided with an ‘unfair advantage’. Plantcor did not participate in the 2 February 2026 creditors' vote. Plantcor raises a panoply of complaints. They include, in addition to those already mentioned, the following: (i) the process was fundamentally flawed and opaque, which includes an unexplained transition from an auction process to a private treaty process, (ii) Plantcor’s full PCF claim should have been provisionally recognised for voting purposes, which would have caused it to be one of the largest voting creditors, (iii) creditors were asked to vote on incomplete and conditional proposals, (iv) both offers were conditional on Plantcor's agreement, (v) Plantcor’s offer was not disclosed to creditors and was not tabled alongside the two shortlisted offers, (vi) creditors were denied the opportunity to consider and vote on Plantcor's offer, which it claims may have yielded a more favourable outcome under the applicable distribution waterfall, (vii) the voting process lacked transparency, (viii) material and important information was withheld from creditors, meaning that material information concerning the evaluation of the offers was not disclosed, and (xi) the ballot ultimately precluded an informed and genuine creditor choice and vote.

[27] Horizon and its practitioners deny that there is merit in Plantcor’s complaints. They contend that (i) Plantcor's (original) offer had lapsed, (ii) Plantcor had failed to submit a compliant bid before the stipulated 4 November 2025 deadline, and (iii) the 2 February 2026 creditors' vote merely sought to identify creditor preference between the two shortlisted bidders.

[28] Bright Minerals was subsequently disclosed to be Bidder A, who was also the preferred bidder in terms of the 2 February 2026 creditors' vote; albeit Plantcor did not know this at the time. Bright Minerals contends that its offer is binding, superior in value, and not conditional upon an agreement with Plantcor.

[29] Subsequent to the 2 February 2026 creditors' meeting, Plantcor sought to revive its offer. It did so on 6 February 2026. It also objected to the implementation of the outcome of the vote at the 2 February 2026 creditors' meeting (i.e. the preferred bidder process, and then in favour of Bright Minerals).

[30] As foreshadowed above, Plantcor complains that the anticipated sale and the preferred bidder process was conducted in a procedurally untransparent, unfair and flawed manner. Plantcor, additionally, contends that the implementation of the outcome of the 2 February 2026 creditors' meeting vote should be interdicted pending Mr. *Swart SC's* determination of the disputed balance of Plantcor's PCF claim, because such may, as already mentioned, materially affect creditor voting rights, rankings, and distributions (including the applicable distribution waterfall).

[31] Correspondence was exchanged between the parties during the first week weeks of February 2026. Plantcor requested *inter-alia* voting schedules, proxies, ballots *etc*. It also sought undertakings that the outcome of the vote at the 2 February 2026 creditors' meeting would not be implemented pending judicial intervention.

[32] The documents and undertakings requested by Plantcor were not provided – hence this application. Plantcor seeks, in essence, interim relief restraining the practitioners from implementing the outcome of the 2 February 2026 creditors' vote. pending (i) the determination by Mr. *Swart SC*, and (ii) its contemplated challenge to the validity of the creditors' vote at t the 2 February 2026 creditors' meeting.

[33] Plantcor contends that if it is not granted the relief it seeks, its rights would be irreversibly prejudiced because *inter-alia* implementation of the vote would be irreversible, and would include transferring to a third-party purchaser the value materially created by Plantcor's capital expenditure and underground development, without it being adequately compensated.

[34] Simply stated, Plantcor seeks interim relief to preserve the *status quo* that prevailed prior to the 2 February 2026 creditors' meeting pending the expert determination, and the institution of separate adjudication proceedings to set aside the creditors' vote.

[35] For their part, the opposing respondents contend *inter-alia* that (i) the adopted business rescue plan authorises the sale process, and this sale was contemplated as long ago as 2001, (ii) Plantcor's offer had lapsed, (iii) Plantcor was afforded every opportunity to participate in the sale process and the February 2026 creditors' vote, (iv) the pending PCF determination has no bearing on the practitioners' authority to implement the adopted business rescue plan, and (v) that neither the unresolved PCF dispute nor the creditors' vote provides a sustainable legal basis for the relief that Plantcor seeks.

C. The urgent interim interdict relief that Plantcor seeks in its application

[36] Plantcor seeks broad-ranging relief in its notice of motion. The specific relief sought in its notice of motion requires restating for purposes of framing, not only its entitlement to the relief that it seeks, but also the two intervention applications.

> ‘1 That the forms and service provided for in the Uniform Rules of Court be dispensed with and that this application be heard as one of urgency in terms of Rule 6(12).
>
> 2 Granting the Applicant leave, in terms of section 133(1)(b) of the Companies Act 71 of 2008, to institute and prosecute these proceedings against Horizon Chrome Mine (Pty) Ltd (in business rescue) and/or the business rescue practitioners, to the extent that such leave is required.

3 Pending finalization of the application processes stipulated in paragraph 5 below, the First and Second Respondents ("*the BRPs*") and the First Respondent are precluded, with immediate effect, from implementing, giving effect to, or taking any step directed at implementing the outcome of the creditors' vote, arising from the general creditors' meeting of 2 February 2026.

4 The First to Third Respondents are specifically interdicted and restrained for the period referred to in prayer 3 above from: -

4.1 implementing or enforcing any rights arising from the vote and/or preferred bidder process referred to above;

4.2 concluding, signing, accepting, approving, or giving any binding effect (whether conditionally or unconditionally) to any agreement, transaction, term sheet, sale agreement, exclusivity arrangement, option, memorandum of understanding, addendum, or similar instrument with Bidder A (or any other bidder arising from or related to the same process);

4.3 granting any exclusivity, preference, deposit arrangement, right of first refusal, "*lock-up*", or other mechanism that directly or indirectly impedes, forecloses, or materially prejudices alternative outcomes;[4]

4.4 disposing of, encumbering, or otherwise dealing with any material assets of the First Respondent, including the mining right and/or related operational assets, in a manner that alters the *status quo* or prejudices the Applicant's statutory participation rights and/or claim position;

4.5 taking any step that advances regulatory, statutory, or administrative implementation, including submitting or progressing any application, consent, notification, filing, or process for approval regulator, authority or stakeholder premised on an "acceptance" of Bidder A (including, without limitation, any processes for the transfer of a mining right or cession/transfer of permits);

4.6 granting site access, occupation, operational control, mining access, control of plant or equipment, or site establishment rights

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[4] This prayer for relief is non-sensical. Plantcor abandons it in its proposed draft order discussed below.

to Bidder A (or any third party) in a manner that changes operational control or materially alters the status quo at the mine;[5]

4.7 placing personnel, equipment, security, or operational management on site, or taking any step that changes operational control or materially alters the *status quo* at the mine or conduct which will displace the Applicant from site;[6]

4.8 representing to any creditor, regulator, stakeholder or third party that any binding sale of the mine (or mining right) has been concluded pursuant to the vote and/or preferred bidder process referred to above, save to state that the process is subject to this Court's interdict.

5 The interdict in paragraphs 3 and 4 shall operate pending: -

5.1 the finalisation and determination by the adjudicator, Adv Swart SC, in the pending adjudication proceedings, presently underway in respect of the Applicant's disputed post-commencement finance claim ('*the PCF Adjudication*').

5.2 the finalisation and determination by the adjudicator, pertaining to the Applicant's claim for the setting side of the vote obtained from the general creditors' meeting of 2 February 2026 (the '*Setting aside of the Vote-Adjudication*').

6 Directing the First and Second Respondents, within 48 (forty-eight) hours of service of this order (or such other period as the Court may direct), to deliver to the Applicant: -

6.1 the consolidated voting schedule(s), identifying each creditor, the admitted voting amount, the class in which the vote was cast, whether by proxy or in person, and the vote cast;

6.2 copies of all proxies and voting ballots received;

6.3 any tally sheets, count workpapers, and working schedules used to compile the vote result, along with all amendments thereto;

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5 The possibility of this relief possibly infringing on the business rescue practitioners ability to exercise rights, and comply with responsibilities and duties, was raised with Senior Counsel for Plantcor, was not pressed in argument and subsequently abandoned by Plantcor in terms of its proposed draft order.

6 *Ibid*.

6.4 the timetable and mechanics for closing and declaring the result (if not already done), including the treatment of any disputed voting interests;

6.5 the final consolidated voting schedule and scrutineer's certificate (if applicable) upon close of the vote and the declared outcome.

7 Ordering the Respondents, jointly and severally, the one paying the other to be absolved, to pay the costs of this application, including the costs of two counsel (if so employed), on the scale as between party and party, alternatively such costs order as the Court may deem fit.

8 Granting further and/or alternative relief.'

[37] In response to certain 'concerns'[7] raised during argument regarding the formulation of the relief it seeks in its notice of motion, Plantcor provided a draft order in the following terms:

'1. The Applicant's non-compliance with the Uniform Rules of Court with regards to service, filing and prescribed time periods is condoned in terms of Uniform Rule 6(12) and that the application is adjudicated upon as an urgent application as contemplated in the said rule.

2. The Applicant is granted leave in terms of section 133(1)(b) of the Companies Act 71 of 2008, to institute and prosecute these proceedings against Horizon Chrome Mine (Pty) Ltd (in business rescue) and/or the business rescue practitioners, to the extent that such leave is required.

3. Pending finalization of the adjudication processes, the Second and Third Respondents ("the BRPs") and the First Respondent are precluded, with immediate effect, from implementing, giving effect to, or taking any step directed at implementing the outcome of the creditors' vote, arising from the general creditors' meeting of 2 February 2026. The First to Third Respondents are specifically interdicted and restrained from:

3.1 implementing or enforcing any rights arising from the vote and/or preferred bidder process;

3.2 concluding, signing, accepting, approving, or giving any binding effect (whether conditionally or unconditionally) to any agreement, transaction, term sheet, sale agreement, exclusivity

7 See footnotes 5 and 6 above.

arrangement, option, memorandum of understanding, addendum, or similar instrument with Bidder A (or any other bidder arising from or related to the same process);

3.3 disposing of, encumbering, or otherwise dealing with any material assets of the First Respondent, including the mining right and/or related operational assets, in a manner that alters the status quo or prejudices the Applicant's statutory participation rights and/or claim position;

3.4 taking any step that advances regulatory, statutory, or administrative implementation, including submitting or progressing any application, consent, notification, filing, or process for approval to any regulator, authority or stakeholder premised on an "acceptance" of Bidder A (including, without limitation, any processes for the transfer of a mining right or cession/transfer of permits);

3.5 representing to any creditor , regulator, stakeholder or third party that any binding sale of the mine (or mining right) has been concluded pursuant to the vote and/or preferred bidder process referred to above, save to state that the process is subject to this Court's interdict.

4. The Applicant is directed to initiate and/or institute adjudication proceedings, within 30 days of this order, against the First to Third Respondents pertaining to the Applicant's claim for the setting aside of the vote obtained from the general creditors' meeting of 2 February 2026.

5. The interdict in paragraph 3 is to operate pending:

5.1 the finalisation and determination by the adjudicator, Adv Swart SC, in the pending adjudication proceedings, presently underway in respect of the Applicant's disputed post-commencement finance claim ("the PCF Adjudication");

5.2 the finalisation and determination by the adjudicator, pertaining to the Applicant's claim for the setting aside of the vote obtained from the general creditors' meeting of 2 February 2026. .(the "Setting aside of the Vote- Adjudication").

6. The First to Third Respondents are directed to, within 48 (forty-eight) hours of service of this order (or such other period as the Court may direct), deliver to the Applicant:-

6.1 consolidated voting schedule(s), identifying each creditor, the admitted voting amount, the class in which the vote was cast, whether by proxy or in person, and the vote cast;

6.2 copies of all proxies and voting ballots received;

6.3 any tally sheets, count workpapers, and working schedules used to compile the vote result, along with all amendments thereto;

6.4 the timetable and mechanics for closing and declaring the result (if not already done), including the treatment of any disputed voting interests;

6.5 the final consolidated voting schedule and scrutineer's certificate (if applicable) upon close of the vote and the declared outcome.

7. The First to Third Respondents are jointly and severally liable, the one paying the other to be absolved, to pay the costs of this application, including the costs of two counsel (if so employed), on the scale as between party and party.'

D. Plantcor's application is plainly urgent

[38] The first port of call in this judgment is a determination of the urgency question.

[39] Plantcor submits that the application is genuinely urgent. I agree.[8]

[40] It is well-established that appropriate commercial interests are as much worthy of protection as matters concerning threat to liberty, life or some other basic essential of everyday life and, as such, justify involving uniform rule 6(12).[9] Moreover, insolvency

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8 See *Hultzer v Standard Bank of SA (Pty) Ltd* (1999) 20 ILJ 1806 (LC) 1809.

9 See *inter-alia Avis Southern Africa (Pty) Ltd and Others v Porteous and Another* 2024 (2) SA 386 (GJ) para 19 to 21, *Cessions (Pty) Ltd v Stumrab (Pty) Ltd* 1980 (2) SA 361 (W) 362C. *Twentieth Century Fox Film Corporation v Anthony Black Films (Pty) Ltd* 1982 (3) SA 582 (W) at 586F-G and *CEZ Investments (Pty) Ltd v Wynberg Auto Body (Pty) Ltd* [2021] ZAGPJHC 499 (29 September 2021) para 19.

related matters are, given their nature, increasingly being recognised as urgent.[10] Business rescue litigation is indubitably included in this broad church.[11]

[41] I am satisfied that Plantcor's case for urgency satisfies (i) uniform rule 6(12)'s separate considerations of the circumstances that render the application urgent, and the inability to obtain substantial redress at a hearing in course, and (ii) the threshold an applicant must meet when seeking urgent relief in the Dedicated Insolvency Motion Court and as per the provisions of its Directives applicable to urgent applications.[12]

[42] While I accept that the procedure set out in uniform rule 6(12) 'is not there for the taking',[13] even if there are any shortcomings in Plantcor's case for urgency within a strict application of the parameters of uniform rule 6(12) and this Court's directives on urgency, regard is still be had to then-Appellate Division decision in *Safcor Forwarding*.[14]

[43] The relevant dicta in *Safcor Forwarding*[15] reads:

> '… it is for the Court to decide whether the matter is really one of urgency and whether the circumstances warrant a departure from the normal procedures. To hold otherwise would, in my view, make the Court the captive of the Rules. I prefer the view that the Rules exist for the Court, rather than the Court for the Rules.'

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[10] For example, see *Imperial Logistics Advance (Pty) Ltd v Remnant Wealth Holdings* 2022 JDR 3071 (SCA) which deals with liquidation applications.

[11] See *Tamela Mezzanine Debt Fund I Partnership v KT Wash Detergents (Pty) Limited and Others* 2026 (3) SA 606 (GJ) para 75 onwards, *Koen v Wedgewood Village Golf and Country Estate (Pty) Ltd* 2012 (2) SA 378 (WCC) *Matshazi and Others v Mezipoli Melrose Arch (Pty) Ltd and Another* [2020] ZAGHJHC 135 (3 June 2020) and *Copper Sunset Trading 220 (Pty) Ltd v Spar Group Ltd and Another* 2014 (6) SA 214 (LP) para 19.

[12] Dedicated Insolvency Court Directive, 10 March 2025 and see *Tamela Mezzanine Debt supra* para 77.

[13] *East Rock Trading 7 (Pty) Ltd v Eagle Valley Granite (Pty) Ltd* 2011 JDR 1832 (GSJ) para 6.

[14] *Safcor Forwarding (Johannesburg) (Pty) Ltd v National Transport Commission* 1982 (3) SA 654 (A).

[15] Supra 675 H.

[44] Applying an updated, normative and constitutional gloss to the aforesaid, the Constitutional Court held in *PFE International and Others v Industrial Development* Corporation *of South Africa Ltd*:[16]

> '[30] Since the rules are made for courts to facilitate the adjudication of cases, the superior courts enjoy the power to regulate their processes, taking into account the interests of justice. It is this power that makes every superior court the master of its own process. It enables a superior court to lay down a process to be followed in particular cases, even if that process deviates from what its rules prescribe. Consistent with that power, this court may in the interests of justice depart from its own rules.'

[45] The urgency in this application is driven by various factors and considerations. These include (i) its trigger event being the creditors' vote held on 2 February 2026, (ii) the practitioners' intention to implement the outcome of the vote, (iii) the practitioners' accelerated post-meeting implementation timetable, (iv) the practitioners' non-furnishing of the requested undertakings, and (v) the genuine prospect that implementation of the 2 February 2026 creditors' vote will be accompanied by probable irreversible events. These events include the conclusion of transaction documents, the transfer of operational control of the mine and its assets, and the vesting of third-party rights.

[46] Plantcor's submission that a restoration of the *status quo* may well, probably will, be impossible and irreversible is well made, and so too its position that the aforesaid consequence should not be permitted to materialise before *inter-alia* the full and true extent of Plantcor's creditor status and voting interests is determined in the pending PCF adjudication process.

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16 2013 (1) SA 1 (CC) para 30.

[47] Whilst not aligning itself with Plantcor, NUM also relies on employee prejudice. It contends that the implementation of the proposed transaction may negatively affect employees that it represents.

[48] I am not persuaded that the counter-urgency arguments raised in opposition to Plantcor's application and NUM's intervention application shift the urgency needle against Plantcor and NUM. I am, for example, unpersuaded that the urgency is self-created. It matters not that (i) the mine has been marketed for sale since 2021, (ii) the adopted business rescue plan has always contemplated a sale process, and (iii) Plantcor is said to only attempt to revive its offer after creditors had already considered the shortlisted offers.

[49] The immutable urgency trigger event, as already mentioned, is the creditors' vote of 2 February 2026 its ensuing implementation, and the failure to furnish undertakings. Plantcor explains that, on 12 February 2026, the practitioners refused requests made by Plantcor, and on 18 February 2026 Plantcor requested various documents relevant to the vote. If any criticism is to be laid at Plantcor's feet is the delay between 12 or 18 February 2026, and 25 February 2026, in bringing its application. This criticism however does not mean that Plantcor has been insouciant or supine in bringing its application, nor does it materially erode the ultimate and inherent urgency in the application.

[50] Returning briefly to NUM's intervention application and its 'case' for urgency, NUM asks for the standard type urgent relief in paragraph 1 of its notice of motion. The opposing arguments are (i) that NUM does not establish any grounds for its application to be dealt with on an urgent basis, and (ii) that NUM meets none of the requirements for an urgent application. Horizon's and the practitioners' position on this score is formalistic, and it was correctly not vigorously pressed in argument. Moreover, it is obvious that the urgency that accompanies Plantcor's urgent application must, by ineluctable inference, both motivate and accompany NUM's urgent application. It would be a fool's errand for NUM's intervention application to be pursued and dealt with in the ordinary course, and such would defeat the very purpose of its intervention. Striking's NUM's case on the basis of

lack urgency would advance the the interests of justice because (i) it would permit the effective hearing of Plantcor's application, and (ii) NUM has – as discussed below - a right to be heard in this application (it is already indirectly cited in the Plantcor application under the rubric of the fifth respondent).[17]

[51] All things considered, because I find that Plantcor's is application is urgent, and so too is NUM's application.

[52] Therefore, In the exercise of my discretion, Plantcor and NUM (and obviously also Bright Minerals) are entitled to the urgent condonation relief that forms the subject matter of paragraph 1 of their respective notices of motion, and they are granted such relief.

[53] Before concluding this topic, I must apologise for the unforeseen and unavoidable delay in the finalisation of this judgment. Horizon, the practitioners and Bright Minerals – as responsible litigants – at the conclusion of the hearing of the argument in the application undertook to take no further steps in implementing the 2 February 2026 creditors' vote pending the handing down of this judgment.

[54] The undertaking was no doubt provided, and the need therefore appreciated, within the context of *inter-alia* the following: (i) the great importance of the application for all parties, (ii) the length of the papers (approximately 1,000 pages excluding referenced and other necessary authorities), (iii) the length of the argument (which ran to after court hours), (iv) the number of parties involved, (v) the number, nature and complexity of the factual and legal issues requiring determination and accompanying materiality of these considerations, (vi) the basis upon which the Dedicated Insolvency Court operates,[18] (vii) that this matter in fact necessitated a special allocation by the Office of the Deputy Judge

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[17] See for example section 173 of the Constitution.

[18] The roll of the judge sitting in the Insolvency Court includes all unopposed, opposed and urgent insolvency related applications for that Insolvency Motion Court week.

President, and (viii) that the furnishing of Ministerial approval for any sale, so I was advised, would in any event take some 18 months.[19]

[55] The undertakings defused the immediate urgency in the application and, equally importantly, permitted me an appropriate opportunity to consider, research and prepare this judgment and, in so doing, hopefully do justice to the erudite, strong and well-made arguments presented on behalf of the respective parties at the hearing. I thank the parties for their patience.

E. Request for relief under section 133(1) of the Companies Act, 2008

[56] The need for Plantcor seeking and obtaining relief under section 133(1) of the Companies Act, 2008[20] was not pressed, and did not feature prominently (if at all) in the argument before me.

[57] This is understandably so because, as held in *Moodley v On Digital Media*,[21] section 133 finds no application in legal proceedings against a company in business rescue and its business rescue practitioner in connection with the business rescue plan, including its interpretation and execution towards implementation. As such, Plantcor does not require the section 133(1)(b) leave of this Court to proceed with its application.

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19 This consideration does not preclude the real possibility that vested and enforceable right may be created in the interim, absent the undertaking.

20 Section 133(1) reads:

> ‘1. During business rescue proceedings, no legal proceeding, including enforcement action, against the company, or in relation to any property belonging to the company, or lawfully in its possession, may be commenced or proceeded with in any forum, except—
>
> (a) with the written consent of the practitioner;
>
> (b) with the leave of the court and in accordance with any terms the court considers suitable; …’

21 *Moodley v On Digital Media (Pty) Ltd and Others* 2014 (6) SA 279 (GJ) para 11. See also *Elias Mechanicos v Building & Civil Engineering Contractors (Pty) Ltd v Stedone Development (Pty) Ltd* 2015 (4) SA 485 (KZD) para 9 and 10. I do not agree with the criticism in *Booysen v Jonkheer Boerewynmakerry (Pty) Ltd* 2017 (4) SA 51 (WWC). I believe it is incorrect.

[58] In any event, even if I am wrong in the above regards, Plantcor is nevertheless the granted leave contemplated under section 133(1)(b). I do so (i) only and as a matter of abundant caution and to the extent necessary and required, and (ii) in the exercise of my discretion and consequent upon to a consideration the application holistically. There are no terms that accompany the aforesaid leave.

F. The Bright Minerals and NUM intervention applications

(a) Intervention: The legal position, test and principles

[59] The core test for intervention generally rests on the threshold of a 'direct and substantial interest' in the subject matter of the litigation.[22] More specifically, a party seeking leave to intervene is required to show a direct and substantial legal interest[23] in the order that the Court is asked to make.[24] As the Constitutional Court held in *SA Riding for the Disabled Association*:[25]

> 'It is now settled that an application for intervention must meet the direct and substantial interest test in order to succeed. What constitutes a direct and substantial interest is the legal interest in the subject-matter of the case which could be prejudicially affected by the order of the court. This means that the applicant must show that it has a right adversely affected or likely to be affected by the order sought. But the applicant does not have to satisfy the court at the stage of intervention that it will succeed. It is sufficient for such applicant to make allegations which, if proved, would entitle it to relief'.

[60] Accordingly, a qualifying intervention interest will include instances where a (legal) right of the intervening party could be prejudiced by a Court's judgment, its order or the

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22 See uniform rule 12 (intervention).

23 This is something other than a mere four financial interest or indirect interest, which are insufficient - Standard Bank of South Africa Ltd v Swartland Municipality 2010 (5) SA 479 (WCC) 482 et seq.

24 *SA Riding for the Disabled Association v Regional Land Claims Commissioner* 2017 (5) SA 1 (CC) at para 10.

25 *Supra* paras 9 to 14.

outcome of the litigation.[26] The possibility that a legal interest exists is sufficient. It is therefore unnecessary for a Court to positively determine, on the probabilities, that the interest does exist.[27]

[61] Finally, I pause to mention that Horizon's and the practitioners' correctly accept that if an intervening applicant 'can demonstrate that it has some right which is affected by the order in issued, permission to intervene must be granted.[28]

(b) Bright Minerals intervention application

[62] I now turn to deal with Bright Minerals' intervention application. Plantcor opposes Bright Minerals' intervention. As indicated above, Bright Minerals is 'the preferred bidder' pursuant to the 26 January 2026 creditors' vote. It appears that Plantcor did not know this at the time it brought its application.

[63] I share the same scepticism as Plantcor does on the question of Bright Minerals' attorney deposing to its founding affidavit in its intervention application.[29] The issue is however addressed and somewhat remedied in and via its replying affidavit.[30] Accordingly, I am not prepared to regard this issue as being decisive of Bright Minerals intervention application.

[64] I am, however, unpersuaded by Plantcor's statute-centric section 128(1)(a) argument.[31] The essence of the argument is that because Bright Minerals is not an 'affected person',

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26 *Lebea v Menye* 2023 (3) BCLR 257 (CC).

27 *Peermont Global (KZN) (Pty) Ltd v Afrisun KZN (Pty) Ltd t/a Sibaya Casino and Entertainment Kingdom and Others and a Related Matter* [2020] 4 All SA 226 (KZP).

28 Horizonӳ and the practitionersӠheads of argument, CaseLines 006-62.

29 *Levinsohnӳ Meat Products (Edms) BPK v Addisionele Landdros, Kleimoes en nӠAndere* 1981 (2) SA 562 (NC)

30 See *Unlawful Occupiers of the School of the School Site v City of Johannesburg* 20025 (4) SA 1999 (SCA) para 14 to 16. Plantcor should also have invoked uniform rule 7 – *Ganes and Another v Telcom Namibia Ltd* 2024 (3) (SCA) para 14 and 16.

31 The Companies Act, 2008.

as defined in section 128(1)(a), it has no *locus standi* in respect of (i) the integrity of the business rescue process, or (ii) the protection of rights under the business rescue plan. Accordingly, so Plantcor argues, Bright Minerals' intervention application must fail. However, this is not the test for intervention, having due regard to the test, principles and threshold stated above.

[65] In the latter regard, Bright Minerals asserts that its direct and substantial legal interest exists in its status as 'preferred bidder'. To this bow, it adds the following strings: (i) Bright Minerals has made a binding offer to purchase Horizon's assets for R310 million; (ii) the consequential pending negotiations between Bright Minerals and the practitioners may have operational and legal consequences that 'will permanently alter the legal and commercial positions currently enjoyed by Bright and Horizon' (which Plantcor concedes that these consequences may be irreversible); and (iii) that if Plantcor is granted certain of the relief its seeks in its notice of motion, Bright Minerals and the practitioners will be restrained from finalising the pending sale. Bright Minerals also argues the practical effect of a Court granting Plantcor's relief would be the removal of its preferred bidder status, and essentially a re-run of the bidding and voting process.

[66] I am not completely persuaded by Bright Minerals' claimed legal right to protect and preserve its 'preferred bidder' status as establishing an absolute right to intervene. Plantcor benevolently describes Bright Materials' interest as merely a 'contingent interest'. Bright Minerals has not concluded an agreement with Horizon and its practitioners. Bright Minerals also cannot compel Horizon and the practitioners to conclude an agreement with it. Bright Minerals' 'preferred bidder' status does not provide it with any enforceable, actionable or protectable rights *vis-à-vis* Horizon, the practitioners or the subject matter of its binding offer.

[67] At best for Bright Minerals, its 'preferred bidder' status entitles it to negotiate with Horizon and the practitioners towards an agreement on an intended sale (albeit even then possibly not on an exclusive basis, if a better offer were to be received). As such, I am also not

persuaded that Bright Minerals' 'preferred bidder' status reaches the level of a *pacta de contrahendo* (an agreement to agree); which by its nature is generally considered to be legally unenforceable and void for vagueness.[32]

[68] As such, I am not persuaded that Bright Minerals has *established* that it has the required direct and substantial legal interest.[33] That said, by all accounts, this is not the test.[34] As I understand our law, I am not called upon to positively determine that Bright Minerals' interest does exist. The test is instead whether Bright Minerals *possibly* has the required legal interest and, if this possibility exists, it is sufficient for intervention purposes.

[69] With the above in mind, a possibility exists that Bright Minerals has the required legal interest. Additionally, given (i) the seriousness of Plantcor's application, (ii) that Bright Minerals' intervention application is not a frivolous application, (iii) Bright Minerals' senior counsel's valuable contributions within the broader scheme of the arguments and debates in Plantcor's application, and (iv) out of an abundance caution and fairness,[35] the scales in Bright Minerals' intervention application tilt in its favour.

[70] In the above circumstances, Bright Minerals is granted the necessary leave to intervene in Plantcor's application. The costs of its intervention application are costs in the cause of Plantcor's application.

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32 In *Seale v Minister of Public Works* [2020] JDR 2131 (SCA), the Supreme Court of Appeal essentially found that, despite a possible implicit obligation to negotiate in good faith, an agreement to agree does not create an enforceable agreement. the Supreme Court of Appeal in *Seale*, highlighted the principle in *Premier of the Free State Provincial Government and Others v Firechem Free State (Pty) Ltd* [2000] (4) SA 413 (SCA) that ́an agreement that the parties will negotiate to conclude another agreement is not enforceable, because of the absolute discretion vested in the parties to agree or disagreeô

33 To use the language in *Tshwane City v Nambiti technologies (Pty) Ltd* 2016 (2) SA 494 (SCA) 504, albeit in the context of review proceedings: ́There is no legal right to a contractô

34 Peermont Global (KZN) (Pty) Ltd v Afrisun KZN (Pty) Ltd t/a Sibaya Casino and Entertainment Kingdom and Others and a Related Matter [2020] 4 All SA 226 (KZP).

35 Mentioned within the context of section 34 of the Constitution which provides (my underlining): ́Everyone has the right to have any dispute that can be resolved by the application of law decided in a <u>fair</u> public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.ô

(c) NUMõs intervention application

[71] Num’s intervention application is slightly simpler to determine then Bright Minerals’ intervention application.

[72] NUM grounds its entitlement to intervene upon sections 144(1)(a)[36] and 144(3)(b)[37] of the Companies Act, 2008. For its part, section 128(1)(a)(ii) and (iii) of the Companies Act, 2008[38] includes, as a defined ‘affected person’, both employees and registered trade unions representing employees of the company in business rescue. NUM also relies on section 200 of the Labour Relations Act, 1995.[39]

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36 Section 144(1)(a) of the Companies Act, 2008 reads:

> ò(1) During a company's business rescue proceedings any employees of the company who are-
> (a) represented by a registered trade union may exercise any rights set out in this Chapter-
> (i) collectively through their trade union; and
> (ii) in accordance with applicable labour law; or é ô

37 Section 144(3)(b) of the Companies Act, 2008 reads:

> ò(3) During a company's business rescue process, every registered trade union representing any employees of the company, and any employee who is not so represented, is entitled to-
> é
> (b) participate in any court proceedings arising during the business rescue proceedings;ô

38 Section 128(1)(a)(iii) of the Companies Act, 2008 reads:

> ò(1) In this Chapter-
> (a) 'affected person', in relation to a company, means-
> é
> (iii) if any of the employees of the company are not represented by a registered trade union, each of those employees or their respective representatives;ô

39 Section 200 of the Labour Relations Act reads:

> ò(1) A registered trade union or registered employers' organisation may act in any one or more of the following capacities in any dispute to which any of its members is a party-
> (a) in its own interest;
> (b) on behalf of any of its members;
> (c) in the interest of any of its members.
> (2) A registered trade union or a registered employers' organisation is entitled to be a party to any proceedings in terms of this Act if one or more of its members is a party to those proceedings.ô

[73] It is not in dispute that NUM is a registered trade union. NUM claims that it represents Horizon employees. There is, however, a factual dispute as to fact and/or the number of Horizon employees represented by NUM.

[74] Horizon and the practitioners admit that 'NUM represents some employees' at the mine, but claim that these employees 'are employed by Plantcor'. They claim that Horizon has no employees, and that NUM provides no documentary evidence of its members being employed by Horizon. They also rely on (i) confusing, mixed and changing NUM references in NUM's affidavits to employees employed *at* the Horizon Chrome Mine, and 'the workforce', and (ii) NUM's claim that 'the workforce is not technically affected persons [sic] as described in the Companies Act'.

[75] In answer to these claims, NUM asserts that Plantcor 'only pays the payroll of the mines employees, nothing more', and also that a section 197 transfer[40] of these employees to Plantcor has not formally taken place.

[76] However, for the reasons that follow, a definitive or ultimate judicial determination of the aforesaid disputes is immaterial and unnecessary.

[77] NUM, in order to found a basis for its intervention as a registered trade union of Horizon employees, need only have one employee of Horizon as its member. I am satisfied, on both the possibilities and the probabilities, and having regard to the terms of the adopted business rescue plan, that NUM meets this relatively low threshold.

[78] As I read and understand the assertion in NUM's founding affidavit regarding the 'technical' status of the employees, it must be understood and interpreted within the context of the next paragraph in NUM's founding affidavit reference to '[w]hatever label is attached to the workforce for payroll purposes' and, in turn, which phrase must be

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40 Section 197 of the Labour Relations Act, 1995.

measured against that already stated regarding Plantcor paying the mine's employees, and the absence of a section 197 transfer process.

[79] Additionally, various provisions within the adopted business rescue plan point to Horizon having employees. Clause 4.7.3 read with annexure C mentions Horizon 32 having employees. Clause 4.8.4 references a liquidation dividend and includes 'Total Preference Employee Costs *s* 98A'.[41] Clause 5.5.9 provides that the successful implementation of the business rescue plan will result in Horizon having 0 (nil) employees, contemplating a successful section 197 transfer of employees.

[80] Over and above the aforesaid - despite the fact that the employees did not participate in the 2 February 2026 creditors' meeting vote, and at the risk of redundancy, having regard to at least to 144(3)(b) of the Companies Act, 2008 - it cannot seriously be suggested that an employee of Horizon and his or her registered trade union do not, at common law, have at the very least a possible direct and substantial legal interest in the subject matter and fate of Plantcor's application. Albeit ultimately irrelevant for purposes of this consideration, NUM's counsel also made valuable contributions within the broader scheme of Plantcor's application.

[81] Accordingly, like Bright Minerals, NUM is granted the necessary leave to intervene in Plantcor's application. The costs of its intervention application are similarly costs in the cause of Plantcor's application.

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[41] Relating to salary and wages owing to employees.

G. The requirements for interdictory relief

(a) Introduction

[82] The foundational test, and peremptory requirements, for interim or temporary interdictory relief are trite.[42] The well-established and cited test is stated in *Webster vs Mitchell* [43]as follows:

> 'In an application for a temporary interdict, applicant's right need not be shown by a balance of probabilities; it is sufficient if such right is prima facie established, though open to some doubt. The proper manner of approach is to take the facts as set out by the applicant together with any facts set out by the respondent which applicant cannot dispute and to consider whether, having regard to the inherent probabilities, the applicant could on those facts obtain final relief at the trial. The facts set up in contradiction by the respondent should then be considered, and if serious doubt is thrown upon the case of applicant, he could not succeed. In considering the harm involved in the grant or refusal of a temporary interdict, where a clear right to relief is not shown, the Court acts on the balance of convenience. If, though there is prejudice to the respondent, that prejudice is less than that of the applicant, the interdict will be granted. Subject, if possible, to conditions which will protect the respondent.'

[83] For its part, the Constitutional Court in *National Treasury and others vs Opposition to Urban Tolling Alliance and others* ('OUTA')[44] held that the *Setlogelo* requirements still apply in our constitutional democracy, albeit that such now fall to be viewed through a constitutional lens, stating that (footnotes omitted):

> '[45] It seems to me that it is unnecessary to fashion a new test for the grant of an interim interdict. The Setlogelo test, as adapted by case law, continues to be a handy and ready guide to the bench and practitioners alike in the grant of interdicts in busy magistrates' courts and high courts. However, now the test must be applied cognisant of the normative scheme and democratic principles that underpin our

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42 Stemming from *Setlogelo v Setlogelo* (1914 AD 221) and refined by *Webster v Mitchell* (1948 (1) SA 1186 (W).

43 *Supra*.

44 2012 (6) SA 223 (CC) paras 45 and 50.

Constitution. This means that when a court considers whether to grant an interim interdict it must do so in a way that promotes the objects, spirit and purport of the Constitution.

…

[50] Under the Setlogelo test, the *prima facie* right that the claimant must establish is not merely the right to approach a Court in order to review an administrative decision. It is a right to which, if not protected by an interdict, irreparable harm would ensue. An interdict is meant to prevent future conduct and not decisions already made. Quite apart from the right to review and to set aside impugned decisions, the applicants should have demonstrated a prima facie right that is threatened by an impending or imminent irreparable harm. The right to review the impugned decisions did not require any preservation pendente lite.'

[84] Accordingly, in order to be entitled to the interim relief it seeks, Plantcor must establish the folloing in support of its applciation:

[84.1] that it enjoys a *prima facie* (legal[45]) right;

[84.2] an injury suffered or reasonably apprehended;

[84.3] that the balance of convenience favours the granting of the interim relief; and

[84.4] the absence of any other satisfactory remedy (or similar protection by another ordinary remedy[46]).

[85] In addition to the aforesaid four trite interdict requirements must be added the following three encompassing or enveloping considerations, namely:

45 Prest, *The Law & Practice of Interdicts*, Juta, 1996, 52.

46 *LF Boshoff Investments (Pty) Ltd v Cape Town Municipality; Cape Town Municipality v LF Boshoff Investments (Pty) Ltd* 1969 (2) SA 256 (C) at 267.

[85.1] An interdict is an 'extraordinary remedy'.[47] As such, there must be due compliance with its requirements.

[85.2] The remedy of an interdict is a discretionary remedy.[48] Otherwise stated, a Court has a general or overriding discretion to grant or refuse the interim relief.[49] There is no comprehensive rule laid down for the exercise of a judicial discretion in granting or refusing interdicts. Nevertheless, the discretion is to be exercised judicially, having regard to the circumstances of each case,[50] and subject to the normative values articulated in *National Treasury* and *OUTA* above. The fact of the Court's discretion means that even if an applicant establishes the four requisites for an interim interdict, the applicant may still not necessarily be granted interim relief.

[85.3] The requirements for an interdict are not to be considered or evaluated separately or in isolation.[51]

[86] While I am mindful of the third (last) of the aforesaid considerations, I have - for purposes of this judgment and its formulation - separated out at best as possible the four well-established interim interdict requirements. I have nevertheless considered and evaluated, for purposes of the orders granted in this application, the requirements for an interdict holistically and on a unitary basis. These requirements must also be considered within the context of that set out above in this judgment's Topic B.

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47 *Setlogelo supra* 223.

48 *Knox DӒrcy and others v Jamieson and others* 1996 (4) SA 348 (A).

49 See See for example *Knox DӒrcy supra, Messina (Tvl) Development Co. Ltd v SAR&H* 1929 AD 195 at 215*, Yusuf v Abboobaker and Pietermaritzburg Local Road Transportation Board* 1943 NPD 244 at 247.

50 See *Prinsloo v Luipaardsclei Estates and Gold Mining Co Ltd* 1933 WLD 6 at 25.

51 *Olympic Passenger Services (Pty) Ltd v Ramlagan* 1957 (2) SA 382 (D) 383E-F, *Eriksen Motors (Welkom) Ltd v Protea Motors, Warrenton* 1973 (3) SA 685 (A) 691F-G, *Beechman Group Ltd v B-M Group (Pty) Ltd* 1977 (1) SA 50 (T) 540E, and *Bredenkamp v Standard Bank of South Africa Ltd* 2009 (5) SA 304 (GSJ) 314H.

(b) Plantcorôs prima facie rights

[87] As to the first requirement for an interim interdict, the *Webster v Mitchell*[52] test of a *prima-facie*-right-though-open-to-some-doubt applies; being a right that need *not* be established on a balance of probabilities. The right must also be a right which is being infringed, or which the applicant apprehends will be infringed.[53]

[88] Plantcor's asserted *prima facie* right is hotly contested, and ultimately served as the focal point of the argument.

[89] Plantcor has provided PCF to Horizon and the practitioners.[54] It is a creditor of Horizon, albeit the value or amount of its full PCF claim is disputed. A creditor's voting power (voting interest) is determined with reference to the full value of the amount owed by the company in business rescue to a creditor.[55]

[90] Plantcor does not challenge the adopted business rescue plan. It challenges the integrity its implementation. Stripped down to its core elements, Plantcor's central and primary complaints – which informs its *prima facie* rights – are the following (i) its 'Full Voting Right Complaint' and (ii) its 'Process, Information and Transparency Complaint'.

[91] I articulate the second of the aforesaid complaints first. Plantcor's Process, Information and Transparency Complaint pertains to a right to an informed and transparent decision making process and in respect of, and on which, it is called upon to vote as a creditor

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52 1948 (1) SA 1186 (WLD).

53 *Zulu v Minister of Defence* 2005 (6) SA 446 (T) and *Coolair Ventilator Co (SA) (Pty) Ltd v Liebenberg and Another* 1967 (1) SA 686 (W).

54 Voting rights and voting interests are not confined to pre-commencement creditors ï see *Mashwayo v Wescoal Mining (Pty) Ltd* 2025 (3) SA 441 (SCA) paras 20 to 23 and 34 to 36.

55 Ignoring for present purposes, irrelevant, consideration of ôindependent creditors' voting interestsô

regarding a fundamental aspect of both Horizon's business rescue and the adopted business rescue plan.

[92] Apropos Plantcor's Full Voting Right Complaint: Plantcor takes issue with the common cause fact that 2 February 2026 creditors' vote took place at a time that the true or full extent of its voting rights were the subject matter of contested pending adjudication proceedings. Plantcor contends that it is a recognised PCF creditor and that its creditor voting entitlement must be aligned with its full PCF claim. Plantcor's case is that Horizon's practitioners are proceeding with the implementation of the business rescue plan and bidder-selection process,[56] while Plantcor's disputed PCF remains unresolved. Plantcor claims its statutorily and contractually agreed right (as per the adopted business rescue plan and then in terms of clause 7.5) to have its disputed PCF claims adjudicated (determined) would be rendered meaningless should it not be granted interim relief. I agree with Plantcor on the case and basis of that before me.

[93] In an endeavour to avoid the aforesaid, Horizon and the practitioners rely in their heads of argument[57] on clause 7.2.2 of the adopted business rescue plan. The clause reads: 'For purposes of these proceedings the BRPs will not allow the holders of disputed claims to exercise their voting interest, unless otherwise determined by the BRPs'.

[94] Horizon and the practitioners', as I read their answering affidavit, did not place reliance on clause 7.2.2 in their answering affidavit[58] and it was not traversed in Plantcor's replying affidavit. It is thus not a 'pleaded issue' in the application.

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56 Subject to the temporary undertaking referenced elsewhere in this judgment.

57 CaseLines 006-88, para 63; 006-89, para 69; and 009-96, para 94.

58 In *Swissborough Diamond Mines v Government of the RSA,*[58] Joffe J quoted the following paragraph from *Hart v Pinetown Drive-in Cinema*,[58] with approval: ò[W]here proceedings are brought by way of application, the petition is not the equivalent of the declaration in proceedings by way of action.ôThe aforesaid applies equally to answering affidavits.

[95] In any event, as I read and interpreted the provisions, clause 7.2.2 is tied to the disputed claims referenced clause 7.2.1. This interpretation is support by the adopted business rescue plan's definition for 'Claims' in its clause 3.13 as meaning:

> '… all claims against the Company, the cause of action in respect of which arose, prior to or on the Commencement date [sic] … and including, all claims arising out of any agreement entered into by the Company on or prior to the commencement date [sic];'

[96] The adopted business rescue plan's clause 3.14 definition for 'Commencement Date' is recorded to mean:

> '… The date upon which the court ordered that the Company commenced business rescue proceedings being 26 July 2018;'

[97] Plantcor was not a creditor at the time of the adoption of the adopted business rescue plan, and its claims moreover relate to PCF. As such clause 7.2.2 does not apply to Plantcor's disputed PCF claims, nor the determination before Mr *Swart SC*. It is not the salve Horizon and the practitioners argues it to be.

[98] Moreover, the clause itself is ambiguous. The clause does not address a situation where a creditor, like Plantcor, holds both an accepted claim and a disputed claim and whether the right to exercise any voting interest is completing exclude, or limited only to that portion of the disputed. The clause's ambiguity was nor debated, clarified or remedied via any meaningful argument on its interpretation, nor was any argument made pertinent to the practitioner's discretion to 'determine otherwise'. As such, I return to that already stated regarding Horizon and the practitioners' non-raising and pursuit of this point in their answering affidavit.

[99] Horizon and the practitioners additionally argue that Plantcor's application fails at this threshold because neither the Companies Act, 2008, nor the adopted business rescue plan, afford an official "status' to the 2 February 2026 meeting. Moreover, they argue that

the 2 February 2026 vote was consultative and not constitutive, and as such had no binding effect. It was also suggested that there was no need for the meeting. I am, however, unable to agree with these arguments. This is for the several reasons (individually or collectively) that follow.

[100] As a convenient starting point, the 'agenda' for the 2 February 2026 meeting expressly articulates the 'motion', and the need for creditors to vote on the 'motion', in the following terms:[59]

> 'Having regard to the inherent risks of both offers, the BRPs propose acceptance of the offer that enjoys the support of the majority of creditors.'
>
> Motion – The BRPs should proceed with the acceptance and further negotiations leading to transaction documents with the Bidder that enjoys the support of the majority of creditors.'

[101] A neutral or non-partisan reader of the aforesaid, will be left with the indelible sense that a purpose, albeit possibly not the only purpose, of the 'motion' is to absolve the practitioners of the 'inherent risks' that accompanied both offers, or to share the 'inherent risks' with creditors. As such, the probabilities are that the practitioners sought to or would possibly in future, attach an official 'status' to the creditors' meeting and the creditors' vote on the 'motion'.

[102] In any event - outside the ambit of those expressly provided for events, court proceedings, meeting etc. in Chapter 6[60] of the Companies Act, 2008 - section 145(1)[61] of the Companies Act entitles every creditor to 'notice' of, most other things, each 'meeting or other relevant event concerning the business rescue proceedings and, at least to, 'informally participate' in such proceedings. Whilst a creditors right to participate is

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[59] CaseLines 002-86.

[60] Chapter 6: Business rescue and compromise with creditors (ss 128-155).

[61] Participation by creditors).

informal, the informal nature of its entitlement to participation is something separate to its status, and voting interests, as a creditor.

[103] That said, It is irrelevant whether the 2 February 2026 meeting was a meeting of the type expressly legislated, required or provided for under the Companies Act, or the adopted business rescue plan, or both. This is because the common cause facts are that the practitioners deliberately chose the 2 February 2026 process.

[104] More specifically: (i) the practitioners elected to convene a meeting of creditors (and to afford it such status[62]), (ii) the meeting took place on 2 February 2026, (iii) creditors were entitled and called upon to vote at the meeting, (iv) certain creditors did vote, (iv) the practitioners regard themselves as bound by meeting's outcome (i.e. the creditors' vote), (vi) the practitioners pursue the implementation of that vote, and (vii) the practitioners now seek to protect the vote and implementation.

[105] Horizon and the practitioners cannot approbate and reprobate (i.e. blow hot and cold).[63] They cannot, at the same time, contend (i) that that there was no need for the creditor's meeting nor the vote, and that the vote has no binding effect, but (ii) invite creditor decision-making and a vote, then act to enforce the vote and implement its outcome, and afterwards oppose this application on the basis inter-alia of such vote.

[106] If the practitioners intended (i) to seek the support or direction of creditors via the 2 February 2026 creditors' meeting, (ii) for the creditors' meeting to have a purpose, (iii) for creditors' meeting outcome to have actionable value, and (iii) to implement and act in terms of that actionable value – which the practitioners did - then the practitioners themselves clothed the meeting with a formal status.

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62 Moreover, the meeting is referred to throughout Horizon and the practitionersô heads of argument as a ómeeting of creditorsô

63 *Hlatswayo v Mare and Deas* 1912 AD 242 at 259.

[107] Consequently, it must be that all creditors (i) had a right to participate meaningfully in, and on an informed basis including within the context of the 'inherent risks of both offers' (i.e. Plantcor's Process, Information and Transparency Complaint) at, the 2 February 2026 meeting, and (ii) should have been permitted to vote according to the full consequential value of their respective claims (voting interests). For me to find otherwise, would not permit a fair and reasonable balancing and recognition of the rights and interests of Plantcor, as a creditor of Horizon, with those of Horizon's other creditors.[64]

[108] Moreover, Horizon and the practitioners appear to discount, if not ignore, the innate intention and purpose of the binding expedited dispute resolution provisions in the adopted business rescue plan in not permitting Plantcor to vote the full consequential value of its claim (voting interest).

[109] Horizon and the practitioners furthermore argue that Plantcor's complaints pertain to procedural defects dissatisfaction, not the invasion of any legally recognised right. I again disagree. Plantcor, like all creditors, has a right to have the disputed portion of its PCF claim expertly determined by *Mr Swart SC.* Plantcor is entitled to act to protect this right. It is an enforceable right. To find otherwise frustrates Plantcor's rights as a creditor of Horizon and as an affected person in its business rescue.

[110] Plantcor, as a common cause creditor of Horizon in respect of its undisputed PCF claim, has a *prima facie* right tied to the practitioners' responsibilities, duties, obligations etc. within the context of this application (i) as an officer of the court, and (ii) to act in good faith, with due care, skill and diligence. [65] This is in addition to other fiduciary duties business rescue practitioners may owe, premised on reasonable and fair dealings,

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[64] Section 5(1) of the the Companies Act, 2008 provides that the Act must be interpreted and applied in a manner that gives effect to the purposes set out in section 7. Section 7(k) of the Companies Act, 2008 states that a purpose of the Act is to provide for the efficient rescue of a financially distressed companies in a manner that balances the rights and interests of all relevant stakeholders.

[65] Being the same responsibilities, duties, obligations etc. imposed on directors under the Companies Act, 2008 ï see sections 75, 76, 77 and 140 of the Companies Act, 2008.

accountability and transparency *vis-à-vis* creditors. Simply put, business rescue practitioners owe a panoply of statutory obligations and fiduciary duties to all affected persons (including the company's creditors).

[111] Accordingly, business rescue practitioners, in addition to being transparent and providing material and relevant information when reasonably requested (i.e. Plantcor's Information Transparency Complaint), must balance the interests of all stakeholders, ensuring that no creditor is unfairly preferred or prejudiced without lawful justification.[66]

[112] While the adopted business rescue plan permits the practitioners to sell the assets, business and/or shares of Horizon at 'their sole discretion', this discretion is not unencumbered. It is, at the very least, constrained by (i) the terms of the adopted business rescue plan and an interpretation that *prima facie* limits this discretion to a sale by way of public auction, or private treaty, (ii) and the practitioners' responsibilities, duties, obligations etc. as business rescue practitioners and, (iii) an accompanying *uberrima fides*[67] (i.e. utmost good or most abundant faith) obligation.

[113] I pause to mention that I appreciate the immediate and obvious tension between the 'sole discretion' and 'utmost good faith' concepts. If I am incorrect regarding the interpretation constrain on the ambit and extent of the discretion afforded to the practitioners, then this tension must ease in favour of the 'utmost good faith' obligations, given the overriding fiduciary duties and statutory obligations owed by the practitioners.

[114] Additionally, if the creditors' vote has no inferred or actual 'official status', then nothing stops the practitioners form ignoring the vote and proceeding in terms of the adopted business rescue plan only.

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66 See for example *Tamela Mezzanine Debt Fund supra*.

67 It requires at least full disclosure, honest and fair dealing.

[115] I disagree with the opposing respondents' contentions that Plantcor's rights and interests are limited to the pending determination by Mr. *Swart SC*, and have no bearing on the ultimate sale of the mine. This is for at least the following two reasons.

[115.1] The sale of the mine under the business rescue plan, as matters presently stand, has its most recent origin, and its trigger, the creditors' vote on at the 2 February 2026 creditors' meeting which, in turn, is dependent upon creditors' voting rights which, in turn, is dependent upon the true and full nature and extent of Plantcor's voting rights which, in turn, is dependent upon the outcome of the pending adjudication.

[115.2] While asserting an inferred irrelevance of the determination before Mr. *Swart SC*, Horizon and the practitioners challenge Plantcor's application within the context of the admitted PCF claim and the referral of its disputed PFC claim to Mr *Swart SC*. Horizon and the practitioners claim that Plantcor has no claim for development expenses etc. It is not within the bailiwick of these proceedings for me to determine the merits of PCF dispute referred to Mr *Swart SC*.

[116] I also disagree with the argument that creditors have already exercised their rights and selected Bright Minerals as a preferred bidder. The argument ignores that just mentioned regarding the true and original flaw in the voting process, and the claimed lack of information and transparency around the process. Plantcor's claims of lack of transparency and defects in the voting process separately require considering, within the context of interim relief. Plantcor has a right to the information it requested.

[117] Over and above everything else, the 'agenda' for the 2 February 2026 meeting expressly references:[68] 'Plantcor [sic] position is a factor in both bids and needs to be managed in

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[68] CaseLines 002-85, bullet point 7.

the interest of creditors'. Plantcor cannot be expected to occupy a position, or permitted to be managed, without the required information and transparency.

[118] It is also not for me to determine whether Plantcor's offer is 'better' than Bright Materials or vice versa, or the merits of either offer – topics that occupy much of Bright Material's opposition to this application. It is also not for me to determine the merits or outcome of the pending PCF claim determination, nor the setting aside relief that Plantcor wishes in due course to pursue.

[119] I need only be satisfied on a *prima facie* basis that Plantcor has rights to the relief it seeks and a *prima facie* basis for obtaining such relief (albeit it is an open question whether the latter relief can be sought under the terms of the approved business rescue plan or elsewhere). However, there is enough before me pointing to a *prima facie* determination in due course of the relevant and factual legal questions in Plantcor's favour.

[120] I am also satisfied that a determination in the proceedings before Mr. Swart SC may, if not will, bear on: (i) Plantcor's ranking as a creditor of Horizon, (ii) Plantcor's section 145(4)'s voting interest, (ii) Horizon's financial position and liability profile, (iii) any reasonable, if not prudent, assessment of the commercial acceptability or viability of the proposed sales /offers, and (iv) any similar reasonable, if not prudent, assessment of 'creditor return and distributable value under any sale outcome'.[69] In simple terms, I am *prima facie* satisfied that the determination of Plantcor's PCF claim may inter-alia impact on vote of the 2 February 2026 creditors' meeting, and so too the sale of the mine as a consequence of such vote, and the final stages of the business rescue proceedings themselves.

[121] Additionally, and briefly returning to this topic, Plantcor's *prima facie* right is informed by its Process, Information and Transparency Complaint and namely the defects that

[69] See Plantcor's heads of argument, CaseLines 006-38, paras 76 and 77

Plantcor contends contaminated the voting process that took place at the 2 February 2026 creditors' meeting. Information was only provided 'at a high level'. I am also satisfied that there the practitioners may have impermissibly strayed be beyond the implementation discretion into a de facto amendment of the plan without such being formally adopted by creditors – in terms of the proposed addendum / revision to the existing adopted business rescue plan, or all.

[122] In the case before me, Plantcor's *prima facie* rights are being, and have been infringed, and they are worthy of judicial protection, especially having regard to the balance of the interdict requirements and considerations.

(c) Irreparable harm

[123] The second requirement for an interim interdict is a well-grounded apprehension of anticipated, or ongoing, irreparable harm if the interim relief sought is not granted.[70] Harm is a broad church. Harm need not sound in a financial or pecuniary loss, but it may also include an irremediable breach of an applicant's rights.[71] Harm thus includes a 'discernible or intelligible disadvantage or peril that is capable of legal protection'.[72]

[124] Plantcor's irreparable harm argument is that the implementation of the creditor's vote is the product of its diluted or incomplete voting position, it will be displaced operationally, and the value its claims to created *vis-à-vis* its funding and development expenditure will be transferred to third parties.

[125] I am not persuaded that Plantcor's reliance on its claimed 'funding and development expenditure', and that its displacement is threatened / anticipated from the mine, as harm which is irreparable. This is because the mine will be, should be, sold at market value and

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70 *OUTA supra* 231D and *Tshwane City v Afriforum* 2016 (6) SA 279 (CC) 300B.

71 *Braham v Wood* 1956 (1) SA 651 (D) 665B.

72 Thswane 300D-E and 301D-E.

Plantcor should make a recovery relative to its claim for PCF (whatever that may ultimately be) via the waterfall. Moreover, Plantcor does not have an absolute or indefinite right to conduct the mining operations.

[126] Nevertheless, Plantcor correctly labels the process being undertaken by the practitioners', being a process originating and pursued pursuant to of the contested creditors' vote, as the 'final chapter' and 'irreversible'.

[127] Bright Minerals argues that if Plantcor's concern relates to the waterfall distribution to which it is entitled in Arising's business rescue, then it's remedy is an order precluding any distribution of the proceeds of the sale assets pending the final outcome of the S*wart SC* proceedings. I agree. But, as traversed elsewhere in this judgement, I understand Plantcor's concerns to be more fundamental, and its harm broader and more primary than that which it may, or may not, receive via the waterfall. Plantcor's true harm resides in the pursuit and final implementation of the sale process on which it was entitled to vote, and accordingly influence, according to the full extent of its PCF claim as a creditor of Horizon. The full extent of its PCF claim is still to be determined.

(d) Balance of convenience

[128] The third requirement for an interim interdict is that the balance of convenience must ordinarily weigh in favour of granting interim relief. This involves a consideration of the prejudice that an applicant will suffer if the interim relief is refused against the prejudice to be suffered by the respondent if it is granted.[73]

[129] I am satisfied that, on a conspectus, the balance of convenience weighs in favour of Plantcor. As apparent in the time lines revealed in this judgement, there has already been an extended delay in concluding Horizon's business rescue. Granting the interim relief

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[73] *Tshwane City v Afriforum supra* 302B-C.

sought, and an ensuing delay, within the greater scheme of things of the existing delays, will not derail Horizon's business rescue, and it will also not be pernicious to creditors.

[130] If anything the opposite may well be the case. Plantcor's argument that 'should the sale implemented …, the consequences will be irreversible and permanently alter the fate of Plantcor and creditors alike', has merit. As Plantcor further argues, until such time as its disputed PCF claim has been determined, (i) Horizon's creditors cannot properly assess competing proposals, and (ii) '[t]he distributable proceeds cannot rationally be ascertained and any projected return to creditors is necessarily speculative'.

[131] I also mention that it may be prudent for creditors to await the outcome of the PCF determination. While the determination will be beneficial for Plantcor if the outcome is favourable for it, such outcome may require creditors to readjust their position on the creditors' vote and its consequences given not be beneficial for the balance of creditors because of the possible increase in Horizon's business rescue liabilities, which in turn may impact on the negotiations with Bright Minerals or for the practitioners to re-evaluate the sales process.

(e) No other satisfactory remedy

[132] The fourth and final requirement for an interim interdict is that there must be an absence for the applicant of another adequate ordinary remedy. Otherwise stated, the interdict sought is the only remedy. This requirement is imbricated with the 'irreparable harm' requirement discussed above. This is because generally speaking the lack of any other ordinary remedy is axiomatic to the existence of irreparable harm.[74] It also overlaps, in the circumstances of this case, with the balance of convenience consideration.

74 See Van Loggerenberg, *Erasmus, Superior Court Practice*, Second Edition, Appendices, D6 Interdicts, Service 28, 2025, D6-32, footnote 1.

[133] In the above regards, Horizon and the practitioners argue that creditors and affected persons are adversely affected by the continued delay and possibility of the highest offer not being accepted. Whilst there is merit in these contentions, they must be weighed and measured against a sales process which commenced (should have commenced) as long ago as 3 March 2021.

[134] While there is an obvious need for expedition in business rescue proceedings, these business rescue proceedings are correctly labelled by Plantcor as 'long lingering'. There is also no reason why the proceedings before Mr. *Swart SC* should result in any extended delay, or why the other relief sought by cannot be pursued on an expedient basis.

[135] Horizon and the practitioners also contained that the opposed adjudication in respect of the setting aside the vote is not a process recognised by the adopted business rescue plan. While I agree with this statement, I do not agree with its their accompanying contention that the setting aside a vote will have no factual and legal consequence within context of the practitioner's acting to implement the consequences of such vote.

[136] Bright Minerals argues that Plantcor's present prejudice is self-created because Plantcor failed to pursue available opportunities earlier in the process. This contention overlaps with the considerations of the urgency in this application. I do not agree, for the reasons addressed under this judgment's topic of urgency. An extrapolation of Bright Minerals' argument is that Plantcor should have submitted or re-submitted itself timelessly. This argument however discounts Plantcor's various other complaints.

(f) This Courtôs discretion

[137] On a holistic consideration of this application, its circumstances, and its merits, I see no reason why I should exercise my discretion against the granting of the interdictory relief sought.

H. Other matters / considerations

[138] No sustainable reason is advanced as to the existence of any platform or basis justifying the practitioners contesting Plantcor's request for contemporaneous voting tallies, ballots, proxy forms, tally workpapers related records *etc*.

[139] Whilst I do not suggest for a moment that this is the case, the practitioners should have nothing to hide. They owe creditors a duty of good faith and transparency. If first, second and third respondents have provided certain or all of the aforesaid in terms of their supplementary affidavit of 12 March 2026, I have provided thereof in the paragraph 10 of the orders below.

[140] In addition to that set out above, I have, at some length considered all the (other) claims, submissions, arguments, considerations *etc*. made by and on behalf of the parties in this application. None of them move to depart from the orders that follow.

Cost considerations

[141] To the question of costs now. The general rule is that, subject to the Court's discretion, costs ordinarily follow the result.[75]

[142] I see no reason to depart from the general rule, and no arguments on this score were presented to me.

[143] I am mindful of Plantcor's abandonment of certain of the relief that it originally sought in the notice of motion via their proposed draft order. There is no sustainable basis for Plantcor to have pursued such relief, and no case was mad in its founding affidavit in support thereof. That said, I do not believe that had Plantcor not originally sought such

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75 *Ferreira v Levin NO and Others; Vryenhoek and Others v Powell NO and Others* 1996 (2) SA 621 (CC) 624 para 3 and *Vassen v Cape Town Council* 1918 CPD 360.

relief in its notice of motion that the application would have been unopposed by Horizon and the practitioners. Horizon and the practitioners opposition extended far broader to Plantcor's abandoned relief. Moreover, Plantcor abandoned this relief at the hearing. Additionally I don't find that that pertaining and relevant to the abandoned relief in the affidavits and heads of argument filed, and actual argument, warrants any discount of the costs order in favour of Horizon and the practitioners.

[144] Additionally, the employment of senior counsel and two counsel (where such took place) was both necessary and warranted. In the exercise of my discretion, costs are moreover to be taxed on scale C.

[145] I have considered Plantcor's proposed draft order. If regard is had to the orders granted below, it will be noted that certain of the proposed relief in the draft order is narrowed and curtailed to the vote at the creditors' meeting of 2 February 2026 and the creditors' meeting, given that this is the mast to which Plantcor pinned its colours in its founding affidavit.

[146] Finally, I must express my appreciation to the various senior and junior counsel who appeared and argued before me. The application had, and has, many moving parts, and is both complex and voluminous. Counsel were required to deal with and argue a complex and voluminous urgent application on the hoof. Despite that the hearing and argument enduring for the entire day until after 16:00 pm, counsels' arguments were invaluable, succinct, pithy and free of hyperbole and needless emotion. Equally importantly, the relevant concessions were made when required. I express my gratitude and appreciation. Counsel were professional in every respect. I again also wish to express my gratitude to the parties for their patience in waiting for this judgment.

I. Conclusion and orders

[147] For the reasons set out above, the following orders are granted:

1. The respective applications of (i) the applicant, (ii) Bright Minerals SA (Pty) Ltd (the first intervening applicant), and (iii) National Union of Mineworkers (the second intervening applicant) are found to be urgent and their respective non-compliance with the relevant uniform rules of court for purposes of the urgent bringing of the respective applications is condoned.

2. The first, second and third respondents are permitted to file their supplementary affidavit dated 12 March 2026.

3. Bright Minerals SA (Pty) Ltd (the first intervening applicant) and National Union of Mineworkers (the second intervening applicant) are granted leave to intervene in the application as the sixth and seventh respondent's respectively - the costs of their respective intervention applications are costs in the cause of the applicant's application.

4. The applicant is granted, to the extent required, the necessary leave in terms of section 133(1)(b) of the Companies Act 71 of 2008, to institute and prosecute its application against the first respondent, being Horizon Chrome Mine (Pty) Ltd [in business rescue], and the second and third respondents, being its business rescue practitioners.

5. The first, second and third respondents are interdicted, restrained and precluded from acting in terms of, implementing, giving effect to, and/or taking any step(s) towards implementing (directly or indirectly), the fact and/or outcome of the creditors' vote ('the Creditors' Vote') at the general creditors' meeting of 2 February 2026 in the first respondent business rescue ('the Creditors' Meeting').

6. Without (i) derogating form the generality of paragraph 5 above, and (ii) being exhaustive, the first, second and third respondents are specifically interdicted, restrained and precluded from:

6.1 pursuing, implementing and/or enforcing any rights accruing and/or arising from the Creditors' Vote and/or the Creditors' Meeting;

6.2 concluding, signing, accepting, approving, or giving any binding effect (whether conditionally or unconditionally) to any agreement, transaction, term sheet, sale agreement, exclusivity arrangement, option, memorandum of understanding, addendum, or similar instrument with 'Bidder A', the sixth respondent, or any other bidder arising from or related to the Creditors' Vote and/or the Creditors' Meeting;

6.3 disposing of, encumbering, or otherwise dealing with – in terms of and/or pursuant to the Creditors' Vote and/or the Creditors' Meeting - any of the first respondent's material or substantial assets, including the mining right and/or related operational assets, in a manner that alters the *status quo* or prejudices the applicant's statutory participation rights and/or claim position;

6.4 taking any step(s) that advances regulatory, statutory, or administrative implementation, including submitting or progressing any application, consent, notification, filing, or process for approval to any regulator, authority or stakeholder premised on an 'acceptance' of 'Bidder A', the sixth respondent, or any other bidder arising from or related to the Creditors' Vote and/or the Creditors' Meeting (including, without limitation, any processes for the transfer of a mining right or cession/transfer of permits); and

6.5 representing to any creditor, regulator, stakeholder or third party that any binding sale of the mine (or mining right) has been concluded pursuant to the Creditors' Vote and/or the Creditors' Meeting, save to state that such is subject to this order.

7. The orders in paragraphs 5 and 6 above operate immediately, and are and will be of full force and effect , pending:

   7.1 the determination by the expert, Mr. *Swart SC*, in the presently pending referral to him of the dispute(s) pertaining to the applicant's disputed post commencement finance claims; and

   7.2 the determination of competent legal, review, arbitral or adjudication proceedings to be pursued by the applicant pertaining to the applicant's claim for the setting aside of the Creditors' Vote and which are to be pursued and determined, where possible, on an expedited basis.

8. The applicant is directed to refer, initiate, bring, launch and/or institute the proceeding referred to in paragraph 6.2. above within 15 (fifteen) court days of the first, second and third respondents complying with their obligations in paragraph 9 below. Should the applicant fail to do so, paragraph 7.2 of this order will immediately lapse and be of no force and effect.

9. The first, second and third respondents are ordered and directed to deliver and provide to the applicant's attorneys of record – within 7 (seven) court days of their obtaining notice or knowledge of this order - the following:

   9.1 consolidated voting schedule(s), identifying each creditor, the admitted voting amount, the class in which the vote was cast, whether by proxy or in person, and the vote cast;

   9.2 copies of all proxies and voting ballots received;

   9.3 any and all tally sheets, count workpapers, and working schedules used to compile the vote result, along with all amendments thereto;

9.4 the timetable and mechanics for closing and declaring the result (if not already done), including the treatment of any disputed voting interests; and

9.5 the final consolidated voting schedule and scrutineer's certificate (if applicable) upon close of the vote and the declared outcome.

10. If the first, second and third respondents claim that any of that set in paragraphs 9.1 to 9.5 above:

10.1 has already been provided in terms of the first, second and third respondents supplementary affidavit dated 12 March 2026;

10.2 does not exist;

10.3 cannot be located; and/or

10.4 is not within their possession,

the first, second and third respondents shall then state - on oath within the aforesaid 7 (seven) court day period - (i) as much, and (ii) succinctly set in respect of paragraphs 9.2 to 9.4 above out the efforts and endeavours undertaken to locate same, and/or their whereabouts, if known.

11. The first, second, third and sixth respondents - jointly and severally, the one paying the other to be absolved - are to pay the applicant's and the seventh respondent's party and party costs. Such costs shall be on Scale C and shall include the applicant's costs of both senior and junior counsel (where employed). The seventh respondent only employed one counsel.

[redacted]

AMM AJ
ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION
JOHANNESBURG

Electronically submitted:

Delivered: This judgment was prepared and authored by the Acting Judge whose name is reflected above. This judgment is handed down electronically by circulation to the parties / their legal representatives by email and/or by uploading it to the electronic file of this matter on CaseLines.

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ENROLLED AS MATTER:	UIA-3
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