IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, JOHANNESBURG)

Case No: 2026-098606

(1)	REPORTABLE: No
(2)	OF INTEREST TO OTHER JUDGES: Yes
(3)	REVISED: Yes

Date: 23 June 2026

In the matter between:

THE STANDARD BANK OF SOUTH AFRICA LIMITED	Applicant
and	
DSCM CONSULTANTS CC (in business rescue)	First Respondent
DILLON JOHN WESSELS N.O.	Second Respondent
THE COMPANIES AND INTELLECTUAL PROPERTY COMMISSION	Third Respondent
GITANKUMAR KANTILAL	Fourth Respondent

JUDGMENT

STRIME AJ

INTRODUCTION

1. This matter was argued as an urgent application in the Specialised Insolvency Court on 26 May 2026. On 27 May 2026 I handed down my order as follows:

1.1 This matter is urgent;

1.2 The first Respondent's business rescue proceedings are forthwith converted into liquidation proceedings in terms of section 132(2)(a)(ii) of the Companies Act 71 of 2008;

1.3 The first Respondent's estate is hereby placed under final liquidation;

1.4 The fourth Respondent's counterapplication is dismissed;

1.5 Costs of this application and the fourth Respondent's counterapplication are in the liquidation of the estate of the first Respondent;

2. These are my reasons for my order.

THE PARTIES

3. The applicant, Standard Bank of South Africa Limited (**"Standard Bank"**), seeks an order to convert the business rescue proceedings against the first respondent, **DSCM**, into liquidation proceedings in terms of Section 132(2)(a)(ii) of the Companies Act 71 of 2008[1] (**"the Companies Act"**)

4. There are three additional respondents, Dylan John Wessels N.O. (**"the second BRP"**). **The second BRP** is the recently (and current) appointed business rescue practitioner of **DSCM** (second respondent). The third respondent is the Companies and Intellectual Property Commission (**"CIPC"**) and the fourth respondent is Gitankumar Kantilal (**"Kantilal"**). **Kantilal** is the

[1] (2) Business rescue proceedings end when –
(a) the court –
(i) …
(ii) has converted the proceedings to liquidation proceedings;

sole member of **DSCM**. Initially no relief was sought against the CIPC or **Kantilal** save that in the event of any opposition, then costs were sought against any opposing party. On 12 May 2026 **the second BRP** filed his notice to abide the decision of this court. Until the date of the hearing (on 26 May 2026) only **Kantilal** and **DSCM** opposed the application. At the commencement date of the hearing in response to my request as to the status of the applicant's Rule 7(1) notice, **Kantilal's** counsel conceded that both attorney Rudie Mangena and RM Inc. Attorneys were not authorised to represent **DSCM** and that he represented **Kantilal** only. The application was thus opposed by **Kantilal** only.

5. The application was opposed on numerous grounds as follows:

5.1 that the application was not urgent and that applicant's claim of urgency *"is largely of its own making"*;

5.2 that for the relief it sought in its Notice of Motion, **Standard Bank** first required the leave of the court in terms of Section 133 of the Companies Act 71 of 2008 (**"the Companies Act"**);

5.3 that in demanding return of its vehicles from My Next Car (Pty) Ltd t/a Bolt (**"Bolt"**), **Standard Bank** had again acted in breach of Section 133 of **the Companies Act** contending that for this too **Standard Bank** required the leave of the court before acting as it had;

5.4 that **the Standard Bank Cession** executed by **DSCM** (on 30 May 2014) is not valid and binding as against **DSCM**;

5.5 that **DSCM** had a reasonable prospect of being rescued and that the application to convert it to liquidation should be rejected;

6. **DSCM** also brought a counterclaim against **Standard Bank** for:

6.1 a declaration that, by **Standard Bank** contacting **Bolt** demanding return of the vehicles, this constituted an unlawful enforcement action in breach of the moratorium provided for in Section 133(1) of **the Companies Act**; and

6.2 a declaration that the 2014 cession of book debts did not entitle **Standard Bank** to enforce any security or take enforcement action against **DSCM** or its debtors without the prior written consent of the business rescue practitioner or an order of court, pending final determination of the validity, enforceability and scope of the cession;

6.3 an interdict restraining **Standard Bank** from taking any further steps to enforce its security cession for repossessing vehicles forming part of **DSCM's** fleet of vehicles and from contacting any **DSCM** debtors or counter-parties of **DSCM** without the prior written consent of the current business rescue practitioner or order of court;

6.4 the calling of, *inter alia*, a detailed and comprehensive statement and debatement of account and other financial information from **Standard Bank**.

KANTILAL'S ADDITIONAL SUPPLEMENTARY AFFIDAVIT

7. **Kantilal** filed a supplementary affidavit during the afternoon of the day immediately preceding the hearing, to which he attached, *inter alia*:

7.1 a draft, unaudited, unsigned set of financial statements of **DSCM** for the period ending 28 February 2026;

7.2 a cashflow projection for **DSCM** for the period May 2026 to May 2027.

8. No application seeking the leave of the court to admit it accompanied this supplementary affidavit. There should have been one as one can't just present to a court after the filing of the replying affidavit another affidavit without first seeking the court's leave to serve and file it.

9. At the commencement of the hearing **Standard Bank**'s counsel objected to the affidavit being admitted into evidence this for a number of procedural and substantive reasons. He also drew to the court's attention that the content of the affidavit was damaging to **DSCM**'s case. In this regard he quoted extracts from these annexures which confirmed that **DSCM**:

9.1.1 was factually insolvent because its total liabilities exceeded its total assets by R22,223,661.00; and

9.1.2 was also commercially insolvent as the **DSCM** unsigned, draft financials recorded (*inter alia*) that its ability to continue as a going concern was dependant on a number of factors, the most significant being **Kantilal**'s ability to continue to procure funding for it. It was common cause from the papers **Kantilal** had not.

10. I did not have to rule on this supplementary affidavit's admissibility as **Kantilal**'s counsel resultantly withdrew this affidavit.

RULE 7(1) NOTICE

11. **Kantilal** in his answering affidavit records that he is authorised to represent **DSCM**. This was disputed by the applicant. On 22 May 2026 it served a High Court Rule 7(1) Notice disputing that attorney Rudie Mangena and/or RM Inc. Attorneys authority to represent **DSCM**. When this matter was heard I asked the parties for their views on the notice as it had not been formally responded to. **Kantilal**'s counsel conceded that he / his instructing attorneys did not represent **DSCM**. As already stated, **Kantilal** then was the only party opposing this application.

HISTORY AND FACTUAL BACKGROUND

12. This was not **DSCM**'s first venture into business rescue. It had previously been placed into business rescue and had exited rescue approximately four years back. This earlier rescue formed the basis of **Kantilal**'s challenge on **Standard Bank**'s cession in *securitatem debiti* of claims and debts dated 30 May 2014 (**"the Standard Bank cession"**). I deal with this later in my judgment when I deal with the validity of this cession agreement.

RELEVANT UNDISPUTED BACKGROUND FACTS AND COMMON CAUSE FACTS ARE THAT:

13. On or about 30 May 2014 **DSCM** as represented by **Kantilal** signed a continuing covering cession in favour of **Standard Bank** pursuant to which it ceded to **Standard Bank** in *securitatem debiti* its right, title and interest in and to its book debts, both present and future (**"the Standard Bank cession")**[2]. This is the same cession I have referred to above.

14. Since about June 2024 **DSCM** has paid no monies whatsoever to **Standard Bank** in reduction of its indebtedness to **Standard Bank**.

15. On or about 15 September 2025, the Honourable Fisher J. ordered as against **Kantilal** in his personal capacity (in respect of two guarantees he had signed for on behalf of **DSCM** in favour of **Standard Bank**) payment as follows:

15.1 R759,682.15 together with interest at the rate of 15.7% per annum from 25 April to date of final payment;

15.2 R15,281,759.74 together with interest as provided for in the rental agreements in question;

15.3 R304,055.74 together with interest at the rate of 13.75% per annum and costs of the application on the scale as between attorney and client.

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[2] FA paras 18, 34 and 39. This is the same cession referenced above.

16. **Kantilal** applied for application for leave to appeal this judgment which was refused. He then petitioned the Supreme Court of Appeals in Bloemfontein for leave to appeal. That application also failed. Accordingly, this judgment is final and remains extant as against **Kantilal**.

17. Following on the Fisher J. judgment referred to above and the other litigation matter brought by **Standard Bank** against **DSCM, DSCM** as represented by **Kantilal** on 15 December 2025 placed itself into voluntary business rescue. This it did by way of a resolution signed by **Kantilal** in terms of Section 129(1) of the Companies Act 71 of 2008 (**"the Companies Act"**). This resolution was (as provided for further in **the Companies Act**) accompanied by a sworn statement attested by **Kantilal**, also dated 15 December 2025. Three days later on 18 December 2025 pursuant to **Kantilal's** nomination, one Zander Hugo Insel (**"the first BRP"**) was appointed **DSCM**'s business rescue practitioner.

18. After taking legal advice[3] on the validity of **the Standard Bank cession** and on 20 February 2026 **the first BRP** in writing confirmed the validity of **the Standard Bank Cession**. As the BRP was acting on behalf of **DSCM** in his capacity as its business rescue practitioner, his decision is final and binding on **DSCM**. This then should put paid to any attack on the validity and enforceability of the cession made thereafter.

19. **The first BRP** failed to timeously publish **DSCM**'s business rescue plan[4]. He attempted to secure the consent of creditors to an extension to publish it. **Standard Bank** refused the extension. Given the quantum of **Standard Bank**'s claim, the 50% of the value of creditors' claims required to successfully obtain the extension was not achieved. In March 2026 **the first BRP** then determined that **DSCM** could not be rescued.

20. This left **the first BRP** in a predicament as to what to do. On 27 March 2026 he addressed a letter to **Kantilal** inviting **Kantilal** to demonstrate to him why

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[3] FA paras 18 and 39

[4] Per Section 150(5) of the Companies Act

he, **Kantilal**, thought rescue ought not to be terminated[5]. He asked for a clear and implementable proposal, details of any funding and any alternative proposal that would produce a better return to creditors than on liquidation. **Kantilal** did not pertinently respond to this letter. None of what was asked for was provided by **Kantilal** in his answering affidavit. Rather as appears from the record, this letter infuriated him and his response was to seek the removal of **the first BRP** and to replace him with **the second BRP** which he achieved.

21. On 2 April 2026 **Standard Bank**'s attorneys addressed a letter to **DSCM**'s largest customer, My Next Car (Pty) Ltd t/a Bolt (**"Bolt"**), with whom **DSCM** had entered into lease agreements for 298 of **Standard Bank**'s vehicles demanding return of all of its vehicles which were at the time in **Bolt's** possession. It is this letter which **Kantilal** refers to when he alleges that **Standard Bank** acted and proceeded without first obtaining consent in terms of Section 133 of **the Companies Act.**

22. On 14 April 2026 **Bolt** addressed a notice to **DSCM**, terminating all of its agreements with **DSCM**[6]. Approximately 100 of these vehicles are currently in the possession of **Standard Bank**'s auctioneers, Park Village Auctioneers. The balance of these **Standard Bank** vehicles are in the possession of **DSCM**. **Bolt's** termination as such had the effect of **DSCM** losing a substantial portion of its revenue it previously earned for the lease of these vehicles to **Bolt**.

23. **Bolt's** termination took effect on 15 April 2026 from which date **DSCM** lost all of **Bolt's** revenue[7].

24. On 22 April 2026 **the first BRP** in discharge of his duty as **DSCM**'s business rescue practitioner, launched an application for the liquidation of **DSCM**. As already recorded, **Kantilal** on the same day issued an urgent application to remove **the first BRP** as **DSCM**'s business rescue practitioner.

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[5] FA para 21; annexure FA23
[6] FA paras 19,25; 4R AA Annexure AA5
[7] FA para 19; 4R AA Annexure AA5

25. On 24 April 2026, (according to **Kantilal**'s counsel), **the first BRP** and **Kantilal** *"reconciled"* resulting in **the first BRP** resigning as **DSCM**'s business rescue practitioner, withdrawing his liquidation application and **Kantilal** withdrawing his application to remove **the first BRP** as **DSCM**'s business rescue practitioner.

26. On the same day **the second BRP** was appointed as **DSCM**'s new business rescue practitioner. This took place approximately one month prior to this hearing.

27. Six days later and on 30 April 2026 **Standard Bank** launched this urgent application truncating the time period for filing of notice of intention to oppose to 5 May 2026 and for the filing of answering affidavits to 12 May 2026.

28. After all affidavits had been filed and as already stated, the matter was finally enrolled for hearing in the urgent court on 26 May 2026.

THE BUSINESS OF **DSCM**

29. The business of **DSCM** is that of renting motor vehicles to what it has itself described are *"businesses, individuals and the e-hailing market"*. It is also common cause that **DSCM** operated a fleet of 333 vehicles of which the 298 vehicles with **Bolt** were financed by **Standard Bank** (in terms of written lease agreements and instalment sales agreements). The remaining 35 vehicles were financed by Absa Bank Limited (**"Absa"**).

STANDARD BANK SECURITY

30. As already stated:

30.1 **Standard Bank**'s security for **DSCM**'s indebtedness (in addition to its ownership in and to the 298 vehicles) is **the Standard Bank cession;**

30.2 the validity and enforceability of the cession was placed in issue by **Kantilal**.

31. Only one answering affidavit was filed (i.e taking into account the withdrawal of the supplementary affidavit on the day of the hearing). That is the answering affidavit of **Kantilal**.

32. As already stated neither **DSCM** or **the second BRP** have opposed this application and **the second BRP** has given notice to the court that he abides the decision of this court. He has not filed any affidavits at all. This is profound for the following reasons:

32.1 only he can represent **DSCM** at this time.

32.2 he has given no indication to date whatsoever on whether or not in his opinion there are any reasonable prospects of **DSCM** being rescued.

32.3 whatever **Kantilal** has recorded **the second BRP** is doing or intends doing is hearsay evidence and falls to be rejected by the court.

33. On these grounds alone, and there are more, I have as I record below, rejected **Kantilal's** counterclaims.

ISSUES THAT FALL TO BE DETERMINED

34. Whether or not his application is urgent.

35. Whether or not **Standard Bank** was required in terms of Section 133(1)(b) of **the Companies Act** to seek the leave of this court to launch not only the application but in addition, to demand from **Bolt** as it did on 2 April 2026 return of its vehicles, and to enforce its rights in terms of the **Standard Bank cession**.

36. The validity and enforceability of **the Standard Bank cession**

37. Whether or not **DSCM**'s business rescue proceedings can be converted to liquidation in terms of Section 132(2)(a)(ii) of **the Companies Act**.

38. Whether **DSCM** is commercially insolvent.

39. Whether there is any reasonable prospect of **DSCM** being rescued.

40. The counter-applications.

41. Costs and the scale thereof.

URGENCY

42. **DSCM** disputed urgency and allege that urgency was self created by **Standard Bank**.

43. To satisfy the court that the application is urgent, **Standard Bank** is to set out explicitly circumstances why this matter is urgent and reasons why it cannot be afforded substantial redress at a hearing in due course.

44. **Standard Bank**'s urgency is based on the fact that many of its vehicles were being used and were not insured. In this regard it submitted that its vehicles were depreciating daily, were exposed to loss and risk, were uninsured and that **DSCM** had not been paying any monies to it since 2024.

45. **Kantilal**'s counsel referred to certain annexures attached to **Kantilal**'s answering affidavit in an attempt to provide evidence to the court that **Standard Bank's** vehicles were insured with insurance policies that were fully paid up.

46. In reply **Standard Bank**'s counsel argued and correctly pointed out that these annexures did not evidence this and that at best these documents evidenced that about 100 vehicles only were insured although as he submitted further, these annexures did not evidence any insurance premiums being paid up to date and that these insurance policies were of any force and effect. In the result he finally submitted that at least two thirds of **Standard Bank**'s fleet were uninsured.

47. With regard to urgency **Standard Bank**'s counsel referred me to two authorities as follows:

47.1 One of Goldstone J. in *Twentieth Century Fox Film Corporation and Another v Antony Black Films (Pty) Ltd*[8] to the effect that *"for the purpose of deciding upon urgency of this matter I assumed, as I have to do, that the applicant's case was a good one"*; and

47.2 *Imperial Logistics Advance (Pty) Ltd v Remnant Wealth Holdings (Pty) Ltd*[9] where the court held that:

> *"Winding-up applications are, in general by their nature, urgent ...... The dismissal of the application on the basis that it lacked urgency was therefore not competent. The matter was urgent and should have been treated as such by the High Court."*

48. In the result it was argued that:

48.1 this is a winding-up application in effect; and

48.2 the longer **DSCM** remains in rescue, the longer its moratorium in Section 133 would prejudice its creditors.

49. In determining urgency, I have to consider whether or not **Standard Bank** would be able to obtain substantial redress in due course. I have in this regard taken into account not only the grounds of urgency it relies on, but in addition, my findings below that **DSCM** is commercially insolvent, has little or no revenue whatsoever to pay any of its debt, has no reasonable prospects of being rescued and falls to be liquidated at the earliest opportunity. These facts on their own would justify the matter being heard on an urgent basis, this to avoid any abuse which operates at present and will continue to operate if **DSCM** remains in rescue and is not liquidated. The abuse I refer to is the use of the

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[8] Goldstone J. in Twentieth Century Fox Film Corporation and Another v Antony Black Films (Pty) Ltd 1982(3) SA 582 W at 586 G-H
[9] Imperial Logistics Advance (Pty) Ltd v Remnant Wealth Holdings (Pty) Ltd [2023] ZA SCA 175 (SCA) at paras 30 and 32

moratorium unlawfully to fend off an entitled creditor and using the moratorium to shield a company not needing such protection[10]. This abuse also extends to **Kantilal's** attempts to avoid the inevitable, namely the liquidation of **DSCM** which is commercially insolvent, has no reasonable prospects of being rescued and should be liquidated. I find that there is no evidence which reflects that **Standard Bank's** vehicles in **DSCM's** possession are insured, will in future be insured and such vehicles are at risk of depreciation, loss and damage. This risk is real and ongoing. **Standard Bank** did not delay in launching this application. It did so approximately six days after **the first BRP** withdrew his liquidation application and the appointment of **the second BRP.** It also did not unreasonably truncate the time limits afforded to the respondents to oppose it. On the contrary it gave the respondents reasonable time periods to oppose the application and file affidavits.

50. I also do not believe that **Standard Bank** will, if the application is not granted, secure substantial redress in due course. A hearing in due course will take many months, if not years, to be finally heard. I thus find on all of the above grounds that the application is urgent and should be heard as one of urgency.

THE SECTION 133 OF THE COMPANIES ACT DEFENCES

Firstly what I am to determine is whether or not **Standard Bank** was obliged to apply to the Court for leave to launch this application.

51. An application for conversion in terms of Section 132(2)(a)(ii) is a statutory mechanism provided to the courts to bring an end to business rescue proceedings. It can validly be brought by a creditor[11]. **Standard Bank** had every right to apply to court for this relief. The question is whether an application for conversion of a business rescue proceeding to liquidation in terms of Section 132(2)(a)(ii) first requires the leave of the court. In attempting to answer this

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[10] Booysen v Jonkheer Boerewyn Makery (Pty) Ltd 2017 (4) SA 57 (WCC) at para 53 (per Sher AJ) *"the provisions of S133 are not understood to be a shield behind what a company not needing the protection may take refuge to fend off legitimate claims"*

[11] *South African Revenue Services v Louis Pasteur Investments (Pty) Ltd (in provisional liquidation) 2022(5) SA179*

question one must have regard to the text, context and purpose of Section 133(1).

THE TEXT

52. This section has already received the attention of the Supreme Court of Appeals[12]. It comments hereon as follows;

> *[25] Section 133 must be read as a whole: the different subsections of a provision dealing with the same subject matter must not be considered in isolation but read together so as to ascertain the meaning of the provision. Section 133(1) is a general moratorium provision that applies in relation to the assets and liabilities of the company at the stage when business rescue comes into effect. It protects the company against legal action in respect of claims in general, save with the written consent of the business rescue practitioner and failing such consent, with the leave of the court. This Court has stated the purpose of s 133(1) as follows:*
>
> > *'It is generally accepted that a moratorium on legal proceedings against a company under business rescue is of cardinal importance since it provides the crucial breathing space or a period of respite to enable the company to restructure its affairs. This allows the practitioner, in conjunction with the creditors and other affected parties, to formulate a business rescue plan designed to achieve the purpose of the process.'*
>
> *[26] Both Cloete Murray v FirstRand Bank and Chetty v Hart were concerned with claims existing prior to the commencement of business rescue. The same is true of the cases in the High Court involving attempts to recover possession from companies in business rescue of leased premises or a leased motor vehicle, the possession of which had been lawful prior to the commencement of business rescue. So far as we can ascertain, this is the first occasion on which it has been sought to invoke the moratorium in s 133(1) in relation to a transaction concluded after the commencement of business rescue or property coming into a company's possession after that date. Entirely different factors come into play in that situation. A business rescue practitioner may borrow money, employ people or, as in this case, sell property, in the course of business rescue. If the business rescue practitioner does not meet those commitments, it is not apparent that imposing a moratorium on the enforcement of those contracts, or the recovery of what is due to third parties, serves any significant purpose of business rescue. It may operate to dissuade third parties from entering into transactions that are necessary to keep the business afloat while attempts are made to rescue it. We raised with counsel whether properly*

[12] Timasani (Pty) Ltd & Cawood v Afrimat Iron Ore (Pty) Ltd [2021] ZASCA 43

construed s 133(1) is concerned only with transactions concluded prior to the commencement of business rescue and the possession or ownership of property acquired or possessed prior to that date. However, neither was in a position to make any helpful submissions to us and it would not be appropriate to decide the point without full argument. Fortunately the case can be resolved on the assumption that the moratorium may have effect in relation to transactions occurring after the commencement of business rescue.

[28] *The general moratorium in s 133(1) is a defence in personam: it is a personal, temporary benefit in favour of a company undergoing business rescue that cannot be utilised indefinitely to delay the claims of creditors or result in the extinction of their claims. Indeed, and as stated, legal proceedings in relation to those claims may be initiated or continued with the consent of the BRP or leave of the court.*

[29] *The section is not easy to construe. The prohibition says that 'no legal proceeding ... may be commenced or proceeded with in any forum', save in the circumstances specified in the various sub-paragraphs. That stark prohibition is then qualified by inserting the words 'including enforcement action against the company, or in relation to any property belonging to the company, or lawfully in its possession'. Enforcement action appears to relate to contractual or other obligations incurred prior to the business rescue. It would include any claim for specific performance, payment of a purchase price, or delivery of property or goods that had been sold. The second and third instances involve property that is either owned by the company or in its lawful possession. The insertions must be directed to some purpose, because they are unnecessary if a blanket prohibition on legal proceedings of any kind was the aim. But, prefacing them with the word 'including', suggests that there are other unspecified situations hit by the prohibition. On the other hand, if all claims of whatever type were the target, the insertions serve no useful purpose. Courts have treated the reference to property 'belonging to the company, or in its lawful possession' as excluding such property from the prohibition of legal proceedings. It would have been simpler then to refer to it in a sub-paragraph, as was done with property over which the company exercised the powers of a trustee. However, we must take the section as we find it and there seems no other reason for this insertion. No purpose connected to the process of business rescue warrants the company under business rescue being protected against proceedings to recover property that it neither owns, nor lawfully possesses.*

[30] *In my view, properly construed s 133(1) provides that during business rescue proceedings:*

(1) no legal proceedings, including enforcement action, against the company; and

> (2) *no legal proceedings in relation to property belonging to or in the lawful possession of the company,*
>
> *may be commenced or proceeded with in any forum. Put differently, the words '<u>no legal proceedings' straddle both the circumstances envisaged in (1) and (2)</u>. Thus, in Cloete Murray v FirstRand Bank, it was stated that the <u>inclusion of the term 'enforcement action' under the generic phrase 'legal proceedings' seems to indicate that 'enforcement action' is a species of 'legal proceeding' or meant to have its origin in legal proceedings.</u>*

(the underlining is my own)

53. Since the new Companies Act came into force in May 2011 the general principles as set out in 133(1) have been subject to exceptions, e.g claims against sureties and guarantors for the company, letters for cancellation of agreements, claims made by creditors against assets which were either not in the possession of the company or not lawfully in the company's possession[13].

54. Neither parties' counsel could refer me to any reported authority on whether or not the leave of the court is a necessary pre-requisite for a Section 132(2)(a)(ii) application. In support of his submissions that the court's leave is necessary **Kantilal's** counsel referred me to certain authorities in its heads and referred in argument to two of these authorities, namely:

54.1 *Blue Star Holdings (Pty) Ltd v West Coast Oyster Growers CC*[14] ;

54.2 *Standard Bank of South Africa Limited v Remitto (Pty) Ltd & Others ZAFSHC25* (unreported).

55. These cases are not completely on point. Those courts in these cases did not determine whether or not such leave was a necessary pre-requisite as I am called upon to determine.

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[13] Investec Bank Limited v Bruyns 2012 (5) SA 430
Kythera Court v Le Rendez-vous Café CC 2016 (6) SA 63 (GJ)
Southern Value Consortium v Tresso Trading 102 (Pty) Ltd 2016(6) SA 501 WCC – at paragraphs 26 and 30

[14] Blue Star Holdings (Pty) Ltd v West Coast Oyster Growers CC 2013 (6) SA 540 (WCC)

56. **Standard Bank's** counsel referred me to one of the authorities referred to in **Kantilal's** heads of argument, namely Chetty v Hart[15]. In this case the Supreme Court of Appeal confirmed that, *inter alia*:

> *"[38] The appellant mischaracterises the consent requirement in s 133(1)(a) as a jurisdictional condition. The arbitrator's jurisdiction is derived from the arbitration agreement, not from any provision in the Act. Section 133(1)(a) is more properly described as a statutory moratorium[16] or procedural bar to the initiation or continuation of legal proceedings. The important question is whether, in requiring this condition to be satisfied, the lawmaker sought to invalidate the proceedings brought without the condition having been met or simply to give certain procedural rights to a creditor without nullifying the proceedings when this drastic consequence is not warranted. This answer to this question calls for a closer examination of the provision.*
>
> *[39] Section 133(1) was enacted to protect a company under business rescue against claims from creditors. Its object is to prevent the practitioner being inundated with legal proceedings without sufficient time within which to consider whether or not the company should resist them and to prevent the company that is financially distressed from being dragged through litigation while it tries to recover from its financial woes. Its effect is to stay legal proceedings except in those circumstances mentioned in s 133(1)(a) to (e). The creditor may initiate or continue the proceedings in terms of s 133(1)(a) with the written consent of the practitioner.*
>
> *[40] But s 133(1)(a) is not a shield behind which a company not needing the protection may take refuge to fend off legitimate claims. Thus s 133(1)(b), which is to be read disjunctively with s 133(1)(a) because of the use of the word 'or' in exceptions (a) to (e), permits a creditor to seek the court's imprimatur to initiate or continue legal proceedings against the company in the event of a practitioner's refusal to give consent, or directly, even without the permission of the practitioner having been sought. So s 133(1)(a) is not an absolute bar to legal proceedings being instituted or continued against a company under business rescue. This is a strong indication that non-compliance with the section is not to be visited with the sanction of a nullity.*
>
> *[41] Moreover, there is no other indication in the section that non-compliance carries with it the implication that the proceedings are a nullity. In this regard it is of some relevance that this court recently said of s 134(1)(c), which prohibits the exercise of any right over the property in possession of the company during business rescue proceedings without the practitioner's written consent, that it was directory rather than peremptory. So, non-compliance with the condition in this section does not necessarily*

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[15] Chetty v Hart (2015) (6) SCA424
[16] *Investec Bank Ltd v Bruyns* (19449/11) [2011] ZAWCHC 423; 2012 (5) SA 430 (WCC) para 17.

lead to nullity.[17] *Although this was said in an obiter dictum it was not contended before us that it was wrong and I consider it persuasive.*

[42] *One would therefore have expected the section to say that non-compliance with s 133(1)(a) renders the proceedings void – or use similar language – if that is what it sought to achieve.*[18] *Significantly it says so specifically in s 129(5). That section, which is also in the chapter dealing with business rescue, says in terms that any non-compliance with ss 129(3) or (4) pertaining to the publication of a company resolution to begin business rescue proceedings and appointment of a practitioner means that the resolution 'lapses and is a nullity'. But even where this consequence seemed clear this court considered that when this provision (s 129(5)) was read with s 130(1), 'lapsing and nullity arising from such non-compliance may be less than absolute'.*[19] *So in the treatment of two provisions in the Chapter*[20] *dealing with business rescue proceedings this court seems to have set itself against nullifying actions taken under business rescue proceedings in the face of non-compliance with its provisions. And, properly construed, I think that non-compliance with s 133(1)(a) does not in and of itself invalidate legal proceedings either.*

[43] *But there is more a fundamental obstacle in the way of the respondent's bid to invalidate the arbitration proceedings. Section 133(1) in general and s 133(1)(a) in particular, appears to have been enacted exclusively for the benefit of the company and the practitioner appointed to oversee its affairs. In this respect the practitioner's position is akin to that of a liquidator in s 359 of the 1973 Companies Act.*[21] *In a similar vein, the Western Cape High Court (Rogers AJ) in Investec Bank Ltd v Bruyns*[22] *characterised the defence afforded to the company by the statutory moratorium as a defence in personam – 'a personal privilege or benefit in favour of the company'.*[23] *Once this is accepted a creditor – a claimant against the company as described in s 128(1) – has no locus standi to rely on non-compliance with the section. Put another way, the defence is not available to the creditor. Only the practitioner may seek its protection. And only he may waive or consent to dispense with compliance therewith.*[24]

[45] *While not lacking in ingenuity, this submission is entirely without merit. It is therefore hardly surprising that counsel for the appellant was not able to provide any authority to support his contention. The statutory moratorium is crafted in a manner that*

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[17] *Cloete Murray & another NNO v Firstrand Bank Ltd t/a Wesbank* 2015 (3) SA 438 (SCA) para 24.
[18] Compare Section 359 of the 1973 Companies Act.
[19] *Panamo Properties (Pty) Ltd & another v Nel NO & others* (35/2014) [2015] ZASCA 76 (27 May 2015) para 14.
[20] Chapter 6.
[21] Compare s 359 of the 1973 Companies Act.
[22] *Investec Bank Ltd v Bruyns* 2012 (5) SA 430 (WCC).
[23] Ibid para 18.
[24] Compare s 359(2) of the 1973 Companies Act; *Barlows Tractor Company (Pty) Ltd v Townsend* (727/93) [1996] ZASCA 3; 1996 (2) SA 869 (A) at 884F-G; Henochsberg's Commentary on the Companies Act Vol 1 p 760(3).

balances the rights and interests of the company and claimants against the company. So, as I have pointed out earlier, during the moratorium there is no absolute bar against legal proceedings. A creditor may ask for the practitioner's written consent and if refused, approach the court under s 133(1)(b). In addition a creditor may approach the court directly under this provision for leave to institute legal proceedings, without having asked for the practitioner's consent. The exercise of a creditor's rights are therefore suspended during the moratorium, but this is balanced by the other protections afforded it in the section itself.

[46] The formal requirement for consent to be sought from the practitioner and given in writing was obviously inserted to promote legal certainty and avoid later disputes.[25] But it confers no rights on a creditor other than those specifically provided for in s 133. The appellant thus has no legal interest to challenge the award on the ground she has advanced.

[48] To conclude, the appellant was successful in contending that arbitration proceedings are legal proceedings for the purposes of s 133(1). But she has not been able to persuade us that non-compliance with its provisions in and of itself nullifies the legal proceedings. More fundamentally she has not shown that she has standing to invoke its provisions in order to invalidate an arbitration award on the ground that she was not informed of the business rescue proceedings and therefore deprived of a right to request and to receive written permission to continue the proceedings."

[again the underlining is my own]

57. This application is clearly a "legal proceeding". It is however not an "enforcement action". The question then is whether or not it is a legal proceeding requiring consent of the Business Rescue Practitioner or the leave of the courts.

58. As already stated above neither **DSCM** nor **the second BRP** as its representative have opposed this application. Firstly and obviously then in my view as stated by the SCA above, **Kantilal** has no standing to invoke the provisions of Section 133(1) as against **Standard Bank** as he has. Only **the second BRP** and/or **DSCM** can. They are not before the court. On this ground

[25] Compare *Spring Forest Trading 599 CC v Wilberry (Pty) Ltd t/a Ecowash & another* (725/13) [2014] ZASCA 178; *Spring Forest Trading CC v Wilberry (Pty) Ltd t/a Ecowash & another* 2015 (2) SA 118 (SCA) para 13.

alone and there are more (dealt with below), I can and do dismiss **Kantilal's** defence based on Section 133.

PURPOSE

59. I am also of the view that, in any event, an application for the conversion of a company from business rescue to liquidation does not offend the purpose for which Section 133 was legislated for, because:

59.1 at the time such an application is launched:

59.1.1 the company is no longer capable of being rescued nor has it a reasonable prospect of being rescued;

59.1.2 a business rescue practitioner is no longer involved in trying to financially rescue a company or restore it to solvency. He is not thus then *"being inundated with* [a] *legal proceedings without sufficient time to consider whether or not the company should resist* [if] *them and to prevent the company that is financially distressed from being dragged through litigation while it tries to recover from its financial woes"*.

59.2 as stated, the application is a procedural one. It is one of process. It does not amount to confrontational litigation, is not *"an enforcement action against the company or in relation to any property belonging to the company or lawfully in its possession".* It also does not relate to contractual or other obligations incurred prior to the business rescue claim for specific performance, payment of a purchase price or delivery of property or goods that had been sold.[26] It is an application to change the status of a company from business rescue to liquidation. It does not distract the business rescue practitioner from attempting to rescue a company in the circumstances as described in Chetty v Hart. The BRP is also no longer attempting to rescue the company. Thus not only does

[26] Per Timasani supra

it not offend the purpose for which Section 133(1) has been created, it serves the purpose the BRP is obliged to achieve at this time, namely the placing of a company incapable of being rescued into liquidation.

CONTEXT

60. An application in terms of Section 132(2)(a)(ii) is a proceeding launched at a time which should be a benefit to a business rescue practitioner. I say so because it is launched at a time when a company is no longer capable of being rescued or has no reasonable prospect of being rescued. At this time the business rescue practitioner has a duty then to either launch a Section 132(2)(a)(ii) application, or a liquidation application[27] or to file a notice with the CIPC to terminate the proceedings[28]. Thus in my view an application in terms Section 132(2)(a)(ii) should not trigger as a prerequisite or a requirement a Section 133(1) bar. In any event if it did this does not per Chetty v Hart render these proceedings a nullity.

61. I thus find against **Kantilal** on this point and reject his submission that **Standard Bank** had to first either obtain the consent of **the second BRP** or the leave of the courts before being able to bring or proceed with its application.

DID **STANDARD BANK,** IN CLAIMING BACK ITS 398 VEHICLES FROM **BOLT,** ACT IN CONTRAVENTION OF SECTION 133(1)

62. I also rule against **Kantilal** on this point for the following reasons:

62.1 as stated in Chetty v Hart, he has no right (no locus standi) to raise this defence; and

62.2 **Standard Bank** addressed a <u>letter</u> to **Bolt** claiming return of its vehicles. It did not commence with a legal proceeding and/or an enforcement action. Letters of demand and not legal proceedings or enforcement proceedings and do not offend the provisions of Section 133(1)[29]; and

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[27] Per Section 141(2)(a)(i) and (ii)

[28] Per Section 132(2)(5)

[29] Investec Bank Ltd v Bruyns 2012 (5) SA430;

62.3 in proceeding against **Bolt** it is also common cause then that **DSCM** was not lawfully in the possession of the vehicles which **Standard Bank** reclaimed from **Bolt.** A *rei vindicatio* is also in any event a valid exception to the Section 133 moratorium or put differently, the moratorium in Section 133(1) does not preclude vindicatory proceedings[30] because the assets in question are not the property of the company in business rescue. **Standard Bank's** proceedings against **Bolt** were vindicatory in nature.

62.4 the 298 vehicles are not the property of **DSCM**. These are the property of **Standard Bank**;

62.5 In the result and for all of these reasons, I find that **Standard Bank's** letter addressed to **Bolt** for the return of its 298 vehicles, and the subsequent return of these vehicles by **Bolt** to **Standard Bank** did not trigger nor offend the provisions of Section 133(1).

DID **STANDARD BANK** IN ENFORCING ITS RIGHTS UNDER **THE STANDARD BANK CESSION** ALSO IN THIS INSTANCE REQUIRE EITHER THE PRIOR CONSENT OF THE BUSINESS RESCUE PRACTITIONER OR THE LEAVE OF THE COURT

63. For many of the reasons set out above, which I repeat, I find against **Kantilal.** My findings are based on the following:

63.1 **Kantilal** does not have the right to raise this defence;

63.2 In proceeding against **DSCM's** debtors for payment of their debts due to **DSCM**, **Standard Bank** did not institute any enforcement action or legal proceedings against **DSCM**. **DSCM** had no right to claim these debts. These rights vested in **Standard Bank**[31] exclusively. It issued letters

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[30] Kythera Court v Le Rende Vouz Café CC 2016(6) SA63GJ; [2016] ZAGPHC 172

[31] Picardi Holdings Ltd v Thekwini Property (Pty) Ltd 2009(1) SA493 SCA at paras [3] (496D – E) and [14] (499 A- B).

against **DSCM's** debtors claiming payment of the indebtedness due by them to **DSCM**. **Standard Bank** therefore did not bring any legal or enforcement proceedings against property lawfully in **DSCM's** possession. It enforced a right it exclusively held against **DSCM's** debtors.

THE RESPONDENT'S COUNTERCLAIM

64. During **Kantilal's** counsel's address on his counterclaims, he indicated to me that **Kantilal** was only persisting with his counterclaims in respect of prayers 1, 2, 3 and 10. He was not persisting with the remaining prayers in his counterclaim.

65. Essentially he advised that all that **Kantilal** was now claiming in the counterclaim centred around the Section 133 defences / objections. I then enquired of him that if I found against his client on his client's Section 133 defences / objections, that this was the end of his client's entire counterclaim. He responded in the affirmative.

66. Only **DSCM** as represented by **the second BRP** can bring these counterclaims. **Kantilal** does not have the locus standi to do so.

67. On these grounds I dismiss the counterclaims with costs, such costs to be payable on scale C out of **DSCM's** insolvent estate.

VALIDITY OF **STANDARD BANK'S CESSION**

68. To determine whether there is any merit to **Kantilal**'s view that **Standard Bank**'s cession of debtors is invalid one must take into account the following:

68.1 the fact that this agreement of cession was signed by **Kantilal** in 2014.

68.2 it is in writing.

68.3 the attack on the cession is founded on a legal opinion based on **DSCM's** first venture into business rescue, and that somehow brought the

Standard Bank cession to an end. Not only is this disputed by **Standard Bank**, but in addition:

68.3.1 if this is correct (and there s no evidence before the court that it is) the wording of the cession agreement caters for this. Clause 3 thereof under the heading *"Continuing Covering Security"* provides as follows:

> *"3. The claims ceded by the cedent to the bank will be a continuing covering security for all amounts which the bank is entitled to recover from the cedent in law (including interest, collection costs, default administration fees and legal costs on an attorney and own client basis) whether the amount:*
>
> *3.1 be incurred by the cedent in the cedent's own name or in the name of any business owned by the cedent either solely or jointly with others in partnership or otherwise;*
>
> *3.2 arise from money lent and advanced or to be lent and advanced, or from promissory or bills of exchange made or to be made, accept or to be accepted or endorsed or to be endorsed, suretyships and other obligations assumed or to be assumed or from any other cause whatsoever, <u>even if the debts are temporarily settled at any time</u>."*

[my emphasis added]

68.4 that **Kantilal** takes the view that until **Standard Bank** secures a declarator that its cession is valid and binding it is invalid. This is not correct. On the contrary I find that it is valid and binding until **Kantilal** sets it aside by way of an order of court.

68.5 Finally, as already stated above, **DSCM** as represented by **the first BRP** confirmed the validity of the **Standard Bank cession.** This confirmation is binding by **DSCM. Kantilal** can't change this. This confirmation is on its own sufficient to find that **the Standard Bank cession** is valid and binding.

68.6 I, for all of the above reasons, find the **Standard Bank cession** to be valid, binding and enforceable.

DSCM's COMMERCIAL INSOLVENCY

69. Having regard to **Standard Bank's** founding affidavit and annexures, the common cause facts as admitted by **Kantilal** in his answering affidavit and annexures and what is set out in **Standard Bank's** replying affidavit, the following is clear:

69.1 **DSCM** is commercially insolvent. It is unable to pay its debts. I say so based on, *inter alia*, the following:

<u>Standard Bank has a liquid claim against DSCM</u>

69.1.1 the bank has proved the quantum of its claims by way of certificates. Certificates of balance are prima facie proof of amounts due. Unrebutted prima facie proof becomes sufficient proof on a balance of probabilities[32]. The evidentiary burden of leading evidence to displace the prima facie proof lies on **DSCM.** It has failed to displace the prima facie evidence. In any event, **Kantilal's** own sworn statement he deposed to in support of the business rescue resolution of 15 December 2025 (which I quote below) records that **DSCM** *"has debt of approximately R45 million (forty five million Rand) which comprises mainly of monies owed to investors and financial institutions"* and that this includes *"a disputed tax debt of approximately R2,800,000.00[33]"*. This clearly indicates an admission of liability to **Standard Bank** and **Absa** in at least the sum of R45 million;

69.1.2 **Absa** has withdrawn its facilities and does not intend restoring them at all;

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[32] Senekal v Trust Bank of Africa Limited 1978 (3) SA 375 A at 382E-383C (per Miller JA)
[33] RA at paras 10 - 11

69.1.3 **DSCM's** loss of its main and/or substantial customer, **Bolt**. As a result, all of the revenue it earned from 298 vehicles in **Bolt's** possession has totally dried up;

69.1.4 the statements made under oath by **the first BRP** in his founding affidavit to the liquidation application to place **DSCM** in liquidation quoted in paragraph 73.3 below where he records, and it appears correctly so, that **DSCM** is unable to pay its monthly insurance premiums for the 333 vehicles, and that **DSCM** has no access to funds and has not been able to secure new work and income. There he concludes further that in the absence of any income, **DSCM** cannot sustain trading and cannot meet its operational commitments. Nothing has changed financially and factually for **DSCM** since the filing of that liquidation application;

69.1.5 there is also no settlement concluded with **Standard Bank**; one of the essential requirements advanced by **Kantilal** for **DSCM's** successful rescue.

69.2 I also have had regard to **Kantilal's** allegations in his answering affidavit, namely:

69.2.1 that notwithstanding the loss of **Bolt**, and its revenue to **DSCM**, it has access to other forms of income and revenue from other assets it leases, repairs and maintenance and the like;

69.2.2 that **DSCM** has a funder who is prepared to advance funding to **DSCM**.

69.3 **Kantilal** has however provided no facts and thus no evidence to sustain these allegations. He should have at the very least provided facts evidencing that:

69.3.1 the identity of the funder(s);

69.3.2 the quantum of this funding;

69.3.3 the quantum of the other sources of revenue, if such sources genuinely do exist.

69.4 **Kantilal** endeavoured to justify the refusal to disclose the identity of the new funder / lender to **Standard Bank** on the basis that **Standard Bank** will somehow communicate with this lender and prejudice **DSCM** by persuading this lender to not lend any monies to it. In its replying affidavit, **Standard Bank** deal with this allegation. Firstly it draws to the court's attention the fact that this allegation is not only untrue but also improbable as it is an irrational one. In addition **Standard Bank** then tendered to keep confidential the identity of such funder, not disclose or use the identity of the funder for any other reason other than for the purposes of this matter and to return all these details and information back to **DSCM** at the conclusion of litigation. At the time of the hearing **Kantilal** still did not disclose any of the identities of funders and the like, notwithstanding having received these **Standard Bank** undertakings.

69.5 **Kantilal** in addition tendered to disclose the identity of this funder to the court on a confidential basis. He did not do so.

70. Lastly, in concluding that **DSCM** is commercially insolvent, I have also had regard to what **the first BRP** has stated in his liquidation application quoted in paragraph 73.3 below. I am mindful that **DSCM** and **the second BRP** have not opposed this application. There is not one iota of evidence whether in the form of an affidavit or letter from **the second BRP** as to whether or not **DSCM** is commercially insolvent, is capable of being rescued or has a reasonable prospect of being rescued. All allegations by **Kantilal** as to what **the second BRP** is busy with to try and rescue **DSCM**, is as stated, hearsay evidence and rejected by the court.

71. There is no evidence whatsoever provided by **Kantilal** that **DSCM** is in any position whatsoever to service any of its debts or has the ability to do so. All evidence indicates a non-payment of its due debts, no revenue or cash and no access to revenue or cash to pay any of its debts.

72. I in the result find that **DSCM** is unable to pay its debts and is commercially insolvent.

REASONABLE PROSPECTS OF **DSCM** BEING RESCUED

73. In determining whether **DSCM** has a reasonable prospect of being rescued, I have taken into account the following:

73.1 The following extracts from **Kantilal's** sworn statement signed on behalf of **DSCM** on 15 December 2025:

> *"8. The CC* [a reference to DSCM] *has debt of approximately R 45 000 000 (Forty-five million rand) which comprises mainly of monies owed to Investors and Financial Institutions. This includes a disputed tax debt of approximately R 2 800 000 (Two million eight hundred thousand rand).*
>
> *10. The COMPANY* [also a reference to DSCM] *will be able to settle the amount owing to creditors if it is afforded time and opportunity to shed considerable costs, restructure the business and recover money from assets.*
>
> *13. The information contained in this Sworn Statement and the opinion expressed in this Sworn statement relate to the financial difficulties the CC* [another reference to DSCM] *and how the CC can be rescued and continue as a going concern as an alternative to liquidation and/or pay a higher dividend its creditors than that which would become payable to creditors if the CC were to be liquidated.*
>
> *17. The CC currently has an annual turnover of approximately R30 million per annum and the CC provides employment lo 22 people.*
>
> *18. It operates a vehicle fleet of 333 vehicles, of which 282 are financed by Standard Bank, and the rest by various other banks on leases.*
>
> *19. As in similar type of businesses, the CC Is reliant on, inter alia operating capital, availability of vehicles, including mechanical workshops and support staff, to effectively operate.*

> 20. *The banks in the past have extended various credit facilities to the CC. The financial distress was caused due to a vehicle rental tender that was awarded to the CC from STATS SA, which, unbeknown to us at that stage, was awarded without STATS SA following due process. The tender was eventually cancelled.*
>
> 21. *To be able to service the tender, the CC had to acquire additional vehicles. and we had to employ additional staff members.*
>
> 22. *As a result of the cancellation of the tender, we suddenly had to find additional customers to rent the vehicles to and had to Increase our marketing expenditure.*
>
> 23. *Because we sat with newly acquired fleet that needed new rental clients, the increased staff and operational costs caused additional pressure on the cash flow of the business.*
>
> 24. *The CC is involved in legal proceedings with Standard Bank, as alluded to in the summary prepared by the attorneys of record for the CC, attached hereto, marked as annexure "C".*
>
> *REASONABLE PROSPECT OF RESCUE:*
>
> 25. *Notwithstanding the above, I as the member of the CC believe that there is a reasonable prospect of rescuing the business of the CC, if action is taken immediately and if the CC commences business rescue. If the CC is placed under supervision, we can finalize the settlement proposal that was submitted to Standard Bank in respect of their liability.*
>
> 26. *Initiatives can be taken by the business rescue practitioner, when duly appointed, to and/or all the following steps;*
>
> *21.1 (sic) Imposing an immediate moratorium on all legal proceedings in terms of Section 133 of the Act,*
>
> *21.2 (sic) Negotiate a reasonable settlement with Standard bank,*
>
> *21.3 (sic) Curtail operation expenditure,*
>
> *21.5 (sic) A restructuring of the debt of the CC with all Its creditors,*
>
> *21.5 (sic) Engaging in discussions with various parties regarding the provision of post commencement financing for the cc.*
>
> (the underlining has been added by me)

73.2 As already stated in regard to the above there is no evidence at all sustaining or supporting that:

73.2.1 **DSCM** has *"shed considerable costs"* and recovered money from any of its assets. On the contrary, it has lost a substantial portion of its fleet, recovered no money therefrom and has lost its main and substantial portion of its revenue;

73.2.2 it can effectively operate without the revenue it received from **Bolt**. As stated above, **DSCM** is reliant on *"operating capital, availability of vehicles including mechanical workshops and support staff to effectively operate"*. It appears to now have no operating capital. It has certainly not provided any proof hereof.

73.2.3 it has not settled with **Standard Bank** which appears was an essential requirement for a successful rescue.

73.3 Certain extracts from the founding affidavit to **the first BRP's** application to place **DSCM** in liquidation (Annexure FA28 to Standard Bank's founding affidavit)[34] as follows:

> 23 *The Applicant's assertion of a reasonable prospect to rescue the First Respondent was based on the projected return to creditors if the First Respondent was to be immediately liquidated versus the projected dividend to creditors, shareholders, and relevant stakeholders in the event that a business rescue plan is adopted and substantially implemented.*
>
> 24 *Subsequent to the Applicant's appointment and the commencement of the First Respondent's business rescue proceedings, its biggest customer and source of income, My Next Car (Pty) Ltd, to which it leased approximately 300 vehicles, terminated its agreement with the First Respondent on 15 April 2026.*
>
> 25 *As a result of the above-mentioned termination and loss of its main source of income, and its inability to access any of the funds in its bank accounts or to Collect its debtors, the First Respondent:*
>
> 25.1 *Is unable to service any of its debts; and*
>
> 25.2 *Is unable pay salaries to its 22 employees.*

[34] 002-263 to 280

26 *The First Respondent is further unable to pay the monthly insurance premium for its 333 vehicles resulting therein that the First Respondent's insurance cover over all of its assets will lapse at the end of April 2026. Should any of the First Respondent's vehicles be damaged or stolen after the lapse of its insurance cover, the First Respondent will not be financially able to repair or replace such vehicles, to the obvious severe prejudice of the financiers of those vehicles and to the First Respondent's general body of creditors.*

28 *For the reasons set out above, the Applicant has determined that there is no longer a reasonable prospect of rescuing the First Respondent, and accordingly, as he is obliged to do by Section 141(2)(a)(ii) of the Act, now applies to this Honourable Court for an order discontinuing the First Respondent's business rescue proceedings· and placing it into liquidation.*

29 *This conclusion of the Applicant is based on legal- and financial advice, taking into consideration, inter alia, the following factors:*

29.1 *The First Respondent has no access to its funds and has lost its biggest customer and source of income and cannot pay its employees to continue operating the business of the First Respondent and cannot insure and safeguard the assets of the First Respondent and has not been able to secure new work and income. Despite the protection afforded by the moratorium and ongoing efforts to identify suitable opportunities, no new work materialised. The absence of income means the First Respondent cannot sustain trading and cannot meet the operational' commitments needed for a viable continuation of business rescue.*

30 *In these circumstances, and considering the heightened risk profile associated with vehicle theft and accidents in South Africa. it is the Applicant's view that continuation under business rescue would be contrary to the interests of creditors and the First Respondent.*

31 *The First Respondent's inability to insure its assets presents an immediate and unacceptable exposure. Liquidation, though not a desirable outcome, now represents the only mechanism through which the assets can be placed under the control and protection of the Master of the High Court and the liquidators, who will assume responsibility for safeguarding and realising them.*

32 *Based on the above I have determined that there is no longer a reasonable prospect of the First Respondent being rescued, and that the First Respondent must urgently be liquidated.*

> 33 *I respectfully submit that it will be in the best interests of creditors of the First Respondent for it to be urgently wound-up and for the provisions of chapter XIV of the 1973 Act to be available to a liquidator and creditors in the winding-up of the First Respondent.*

(the underlining is still my own)

74. There is no evidence in **Kantilal's** answering affidavit and annexures to gainsay what is stated with regard to **the first BRP's** allegations that:

74.1 he has determined that **DSCM** is no longer able to be rescued;

74.2 it has no access to funds, having lost its biggest customer and source of income, cannot pay its employees or continue operating the business, cannot insure and safeguard assets and has not been able to secure new work and income resulting in:

74.2.1 **DSCM** not being able to trade and meet operational commitments needed for a viable continuation of its business rescue;

74.2.2 its continuation under business rescue would be contrary to the interests of creditors and **DSCM**;

74.2.3 that it would be in the best interests of **DSCM's** creditors that it be wound-up urgently.

75. All that **Kantilal** has proffered as evidence in substantiation of his allegations that **DSCM** has a reasonable prospect are the following allegations in his answering affidavit:

75.1 That the new business rescue practitioner, namely **the second BRP**, has begun the following steps:

75.1.1 stabilising operations and engaging with remaining clients and suppliers;

75.1.2 assessing all revenue streams including the rent to own portfolio, workshop income and residual rental contracts;

75.1.3 investigating the validity, enforceability and scope of the 2014 cession;

75.1.4 exploring restructuring options including possible debt compromise, asset optimisation and engagement with creditors;

75.1.5 **the second BRP** has established consistent and transparent communication with **DSCM** and himself which in his words *"ensures that the company and its members are properly informed, consulted and involved in the business rescue process, thereby restoring confidence in the proceedings"*.

75.2 I repeat what I have stated in this regard above, namely that no facts, no acceptable primary evidence has been provided to this court in substantiation of these allegations. They are and remain hearsay allegations, unsubstantiated by any primary facts or evidence and rejected.

76. The term *"reasonable prospect"* has been considered by our courts. Eloff AJ in *Southern Palace Investments 265 (Pty) Ltd v Midnight Storm Investments 386 Limited*[35] emphasised that it is not enough merely to assert that the company can be rescued. There must be a factual basis for the contention. The court held that business rescue is not intended to suspend the ordinary consequences of commercial failure simply because a company wishes for time, but only where there is a demonstrable factual platform for believing that the intervention has some real prospect of utility.

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[35] Southern Palace Investments 265 (Pty) Ltd v Midnight Storm Investments 386 Limited 2012 (2) SA423 WCC – paragraphs 21 to 23

77. Brand JA also stated in *Oakdene Square Properties (Pty) Ltd and Others v Farm Bothasfontein (Kyalami) (Pty) Ltd and others*[36] that the term *"reasonable prospect"* does not demand proof on a balance of probabilities that rescue will succeed, but neither is mere speculative optimism enough. At paragraphs 29 to 31 the Supreme Court of Appeals state in essence that what is required is *"a reasonable possibility grounded in objectively ascertainable facts"*. That formulation is important because it recognises that business rescue is forward looking while simultaneously insisting that the future looking case be anchored in evidence.

78. There is clearly no factual basis for any of these allegations, there is no evidence sustaining a reasonable possibility grounded in objectively ascertainable facts. All there is, is hearsay speculation, generalised and unsubstantiated allegations.

79. In terms of Section 147(1)(a)(i) a business rescue practitioner is obliged within ten business days of his appointment to call a first meeting of creditors and inform them, *inter alia*, whether he believes there is a reasonable prospect of rescuing the company. Notwithstanding that **the second BRP** is the successor of **the first BRP** I respectfully submit it is still his duty to convene such a meeting and provide to Affected Parties his opinion on whether or not there is a reasonable prospect of rescuing **DSCM**. At the very least, one would have expected **the second BRP** to file an affidavit setting out or confirming what he has done, what he is doing (as alleged by **Kantilal**) and expressing his view on the reasonable prospects of rescuing **DSCM**. In the absence of such an affidavit I can only conclude that there are no facts whatsoever evidencing that **DSCM** has reasonable prospects of being rescued and thus that **DSCM** has no prospect reasonable or otherwise of being rescued.

80. Finally and of importance in determining whether or not there is a reasonable prospect of **DSCM** being rescued is **Standard Bank's** advices that it would not

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[36] *Oakdene Square Properties (Pty) Ltd and Others v Farm Bothasfontein (Kyalami) (Pty) Ltd and others2013 (4) SA 539 (SCA); [2013] ZA SCA 68 at para 29*

support or approve a business rescue plan in due course. For a business rescue plan to be successfully adopted, it must be *"supported by the holders of more than 75% of creditors' voting interests that were voted*[37]*"*. This 75% hurdle can never be achieved if **Standard Bank** votes against any **DSCM** business rescue plan. This is profound. How can **DSCM** be successfully rescued if it can't get its business rescue plan approved by 75% of creditors voting interest. I am mindful of the provisions of Section 153(1)(a)(ii) of **the Companies Act** which entitles a practitioner to *"... apply to a court to set aside the result of the vote by the holders of voting interests .... on the grounds that it was inappropriate"*. This however does not affect my decision and for all the reasons advanced above.

81. I am satisfied that a clear case for conversion has been made out. **The first BRP** has confirmed categorically that **DSCM** has no reasonable prospect of being rescued. No business rescue plan has been published and there is no indication that one will be published. **DSCM's** main customer and main source of revenue has gone. **The second BRP** has correctly abided the decision of this court. There is no evidence supporting that **DSCM** has a reasonable prospect of being rescued.

82. I accordingly find that:

82.1 **DSCM** is commercially insolvent;

82.2 **DSCM** has no reasonable prospects of being rescued;

82.3 **Standard Bank** is entitled to an order converting **DSCM's** business rescue into a final liquidation.

[37] Section 152(2)(a)

COSTS

83. Initially **Standard Bank** sought penalty costs as against **Kantilal**. At the hearing **Standard Bank's** counsel advised that they no longer persisted with such an order and would be satisfied with an order that costs be in the costs of the liquidation. **Kantilal**'s counsel was of the same view.

I THUS MAKE THE FOLLOWING ORDERS:

1. That this application is urgent.

2. The business rescue proceedings of **DSCM** be converted into liquidation in terms of Section 132(2)(a)(ii) of **the Companies Act**.

3. The counterclaim is dismissed.

4. **DSCM** be placed into final liquidation.

5. Costs of this application and the counter application be costs in the liquidation as calculated on Scale C.

[redacted]

STRI[redacted] AJ

Date of hearing: 26 May 2026

Date of judgment: 27 May 2026

Date of reasons: 23 June 2026

Attorneys for the applicant: Martins Weir-Smith Inc.

Counsel for the applicant: H.A van der Merwe

Attorneys for the first and fourth respondent: RM Inc. Attorneys

Counsel for the first and fourth respondents: M. Luyt