



**IN THE HIGH COURT OF SOUTH AFRICA  
MPUMALANGA DIVISION, MIDDELBURG**

**CASE NO: 2025-184522**

**DELETE WHICHEVER IS NOT APPLICABLE**  
(1) REPORTABLE: **NO**  
(2) OF INTEREST TO OTHER JUDGES: **NO**  
(3) REVISED **YES/NO**

\_\_\_\_\_  
SIGNATURE

09/09/2026  
\_\_\_\_\_  
DATE

In the matter between:

**SIRAC SOUTHERN AFRICA (PTY) LTD**

**APPLICANT**

and

**ALT ENER PRO (PTY) LTD**

**RESPONDENT**

*Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date for hand down is deemed to be 9 September 2026.*

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**JUDGMENT**

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## **Phahlamohlaka J**

### **Introduction**

[1] This is an application for the provisional winding-up of the Respondent, Alt Ener Pro (Pty) Ltd, in terms of section 344(f) of the Companies Act 61 of 1973, read with Item 9 of Schedule 5 to the Companies Act 71 of 2008, on the basis that the Respondent is unable to pay its debts as they fall due.

[2] The application is opposed by the Respondent.

### **Factual Background**

[3] The Applicant supplied goods and services to the Respondent, culminating in the conclusion of a written Memorandum of Agreement (MOA) on 12 December 2024, in terms of which the Respondent acknowledged its indebtedness in the capital sum of R4 754 530.23, to be paid by instalments.

[4] The Respondent defaulted on the July and August 2025 instalments. The Applicant invoked the acceleration clause, thereby making the full outstanding amount immediately due and payable.

[5] A statutory demand in terms of section 345(1)(a) of the Companies Act 61 of 1973 was served on the Respondent on 28 August 2025. No payment, security, or compromise was forthcoming within the prescribed period.

[6] The Respondent opposes the application, alleging, among others, that the goods supplied were defective and that it has a counterclaim for damages.

### **Legal Position**

[7] Section 344(f) of the Companies Act 61 of 1973 provides that a company may be wound up by the court if it is unable to pay its debts.

[8] Section 345(1)(a) sets out the circumstances in which a company is deemed unable to pay its debts, including failure to pay a debt after statutory demand.

[9] Section 346(1)(b) entitles a creditor to bring a winding-up application.

[10] Section 347(1) gives the court discretion to grant, dismiss, or adjourn the application, or make any interim order it deems just.

## **Evaluation**

[11] The principles governing liquidation proceedings are well established. Winding-up proceedings are not to be used to enforce payment of a debt that is *bona fide* disputed on reasonable grounds. If such a dispute exists, the application should be refused.<sup>1</sup>

[12] In resisting the application, the respondent contended that the applicant resorted to the liquidation proceedings *in lieu* of issuing summons regarding the disputed debt.

[13] The Respondent further contended that most, if not all, of the products delivered by the applicant are defective, not fit for purpose, and fraught with latent defects. As a result of those defects, the Respondent contends that it incurred penalties in the amount of R1 500 000.00, and that its client is refusing to release retention monies to the Respondent in the approximate amount of R1 000 000.00.

[14] From the answering affidavit and the submissions of counsel for the Respondent, it is clear that the Respondent does not dispute indebtedness to the Applicant. Instead, the Respondent disputes part of the debt. This was conceded by counsel for the Respondent in an answer to the court's question. That being so, the Respondent is unable to show the amount of its indebtedness to the Applicant.

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<sup>1</sup> *Badenhorst v Northern Construction Enterprises (Pty) Ltd* 1956 (2) SA 346 (T).

[15] Having said that, I am alive to the fact that the existence of a counterclaim or unliquidated claim does not necessarily defeat a winding-up application unless it is bona fide and reasonable.

[16] In *Afgri Operations Ltd v Hamba Fleet (Pty) Ltd*,<sup>2</sup> the Supreme Court of Appeal confirmed that the mere existence of a counterclaim does not, in itself, defeat a winding-up application. The court stated:

“[13] As mentioned above, mere recourse to a counterclaim will not, in itself, enable a respondent successfully to resist an application for its winding-up. Moreover, as set out above, the discretion to refuse a winding-up order where it is common cause that the respondent has not paid an admitted debt is, notwithstanding a counterclaim, a narrow and not a broad one. In these respects the court a quo applied ‘the wrong principle[s]’. There must be no room for any misunderstanding: the onus is not discharged by the respondent merely by claiming the existence of a counterclaim. The principle of which the court a quo lost sight of are: (a) as set out in *Badenhorst and Kalil*, once respondent’s indebtedness has prima facie been established, the onus is on it to show that this indebtedness is disputed on bona fide and reasonable grounds and (b) the discretion of a court not to grant a winding-up order upon application of an unpaid creditor is narrow and not wide.”

[17] Although the Respondent issued summons in respect of its alleged counterclaim, the amount claimed is not clear from the particulars of claim. According to the Respondent’s particulars of claim, the Respondent is seeking payment of the sum of R700 000.00 in claim A and “an order declaring that the capital sum of R4 754 530.23 acknowledged in the Memorandum of Agreement concluded between the parties on 12 December 2024 is reduced by the amount so determined”.

[18] The Applicant has established the jurisdictional requirements for a provisional winding-up order. The Respondent has failed to raise a bona fide dispute on reasonable grounds. Its opposition is inconsistent with its prior written acknowledgement of indebtedness and is unsupported by objective evidence. The evidence demonstrates that the Respondent is unable to pay its debts as they fall due

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<sup>2</sup> *Afgri Operations Ltd v Hamba Fleet (Pty) Ltd* [2017] ZASCA 24; 2022 (1) SA 91 (SCA) at para 13.

and is commercially insolvent within the meaning of section 344(f) of the Companies Act 61 of 1973.

[19] In these proceedings, the Respondent's indebtedness is established by the written MOA, which contains an unconditional acknowledgement of debt and an acceleration clause. The Respondent's defence of defective goods is therefore not supported by contemporaneous documentation or expert evidence and was raised only after the application was launched. Further, the Respondent continued to pay instalments for several months after the alleged defects would have manifested, undermining the genuineness of its defence.

[20] The applicant has not persisted with the just and equitable remedy. I am therefore inclined to grant a provisional liquidation order.

## **Order**

[21] In the result, I make the following order:

1. The Respondent is placed under provisional winding-up in the hands of the Master of the High Court.
2. A *rule nisi* is issued calling upon all persons who have a legitimate interest to put forward their reasons, if any, on 26 October 2026, why the court should not order the final winding-up of the Respondent.
3. A copy of such provisional order is to be served on:
  - 3.1 The Respondent, at its registered office;
  - 3.2 The employees of the Respondent, if any;
  - 3.3 Any trade union representing the employees of the Respondent, if any;
  - 3.4 The South African Revenue Service; and
  - 3.5 The Master of the High Court.
4. A copy of the provisional order is to be published forthwith once in the Government Gazette.
5. A copy of such provisional order is to be published forthwith once in a national English newspaper.
6. The costs of the application shall be costs in the liquidation.

  
**K F PHAHLAMOHLAKA**  
JUDGE OF THE HIGH COURT  
MPUMALANGA DIVISION, MIDDELBURG

#### Appearances

For the Applicant: Adv Tredoux  
Instructed by: Francis Thompson & Aspen

Respondent: Adv Louis  
Instructed by: BLR Attorneys

Date judgment reserved: 3 September 2026