



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

**CASE NO: 2019/29174**

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

A handwritten signature in black ink, appearing to be "A. J. Ally", is written over the signature line.

DATE: 21/5/2021

In the matter between:

**ABSA BANK LIMITED**

Applicant

and

**AA DIAMONDS (PTY) LIMITED**

Respondent

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**JUDGMENT**

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**ALLY AJ**

**INTRODUCTION**

- [1] This is an opposed application for the final winding up of the Respondent Company in terms of Section 345 of the Companies Act, No 61 of 1973, as amended and read with clause 9 of schedule 5 of the Companies Act, 71 of 2005, as amended.
- [2] At the hearing of the application the issue of condonation arose regarding the supplementary answering affidavit of the Respondent.
- [3] I deemed it expedient to hear the condonation application as well as the application on the merits at the same time.
- [4] Accordingly, Applicant's Counsel began argument on condonation and the merits of the application.

## **FACTUAL MATRIX**

- [5] The Applicant alleges that two loan agreements were entered into between it and the Respondent.
- [6] The First being a Term Loan agreement was for the amount of R2 000 000 -00 [two million rand] and the second agreement related to an Overdraft facility at the Applicant bank in favour of the Respondent.
- [7] The Applicant alleges that both the Term Loan agreement and the overdraft facility agreement were breached in that no payments were forthcoming.

- [8] As a result of the breach, so it alleged, the Applicant, through its Attorneys, notified the Respondent about its delinquency, through a letter of demand that payment should be made within in a certain period.
- [9] Applicant alleges that the Respondent failed to make payments as demanded and in terms of Section 345 of the Companies Act, is entitled to a liquidation order in its favour.
- [10] Insofar as the condonation application is concerned the Applicant enjoins the Court to refuse the application for condonation on the basis that the Respondent has not fulfilled the requirements for a successful application for condonation and more fatally, has not submitted an application for condonation in compliance with the Uniform Rules of Court, namely, the document purporting to be an affidavit<sup>1</sup>, is unsigned and therefore no application serves before the Court.

## EVALUATION AND ANALYSIS

- [11] If one has regard to the documents on Caselines regarding the application for condonation *supra* then it is clear that indeed, the purported application is unsigned. The effect thereof, in my view, is that there is no valid application for condonation before me.
- [12] Should I be wrong in holding that there is no valid application for condonation before me, I am of the view that the requirements for a

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<sup>1</sup> Caselines: 001 – 163 to 174

successful application for condonation<sup>2</sup> have not been fulfilled. In my view a full explanation for the delay setting out in detail the dates and times for the delay, are absent. The prospects of success relating to a defence to the liquidation application, in my view, is absent and the case lodged against the Applicant by Respondent, forming the basis of its defence, in my view has no bearing on the present liquidation application.

[13] If there is no valid condonation application before this Court and alternatively, the condonation application is unsuccessful as indicated above, then the Court is left with the Founding Affidavit, Answering Affidavit and Replying Affidavit in the liquidation application before me.

[14] I am satisfied on the papers before me, that in terms of Section 345 (1) (a) (i) of the Companies Act 61 of 1973, as amended, the deeming provision of the section has been proven in that service of the letter of demand on the Respondent took place and there was no response to such letter within three weeks of service on the Respondent.

[15] I am also satisfied that the Respondent has admitted its indebtedness to the Applicant through the offer of settlement attached to Founding Affidavit and Answering Affidavit.

[16] Accordingly, having regard to the above, this Court is satisfied that the Applicant has proven its case for the final winding up of the Respondent.

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<sup>2</sup> Mulaudzi v Old Mutual Life Assurance Company (South Africa) 2017 (6) SA 90 (SCA) @ para 26

- [17] In the result an Order shall issue in terms of the Draft Order marked X, as amended.



ACTING JUDGE OF THE HIGH COURT  
GAUTENG DIVISION OF THE HIGH COURT, JOHANNESBURG

*Electronically submitted therefore unsigned*

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 24 May 2021.

Date of hearing: 10 September 2020

Date of judgment: 21 May 2021

**Appearances:**

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**Respondent:**

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