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

CASE NO: 32078/2021

DATE: 2022-08-05

REPORTABLE: NO.

OF INTEREST TO OTHER JUDGES: NO.

REVISED.

In the matter between

FIRST RAND BANK LIMITED

Applicant

And

TECKRA RESOURCES (PTY) LTD

Respondent

J U D G M E N T

CRUTCHFIELD J: The applicant, Firststrand Bank Limited, claims the final winding up of the respondent, Teckra Resources, (Pty) Limited, together with costs of the application.

2. The applicant's claim is based on a demand made in terms of s 345 of Companies Act 61 of 1973 ('Act 61 of 1973') read together with the provisions of item 9 of schedule 5 of the Companies Act 71 of 2008 ('Act 71 of 2008').

3. The applicant relies on the respondent's deemed inability to meet its financial obligations as and when they become due and payable and/or the deeming provision of s 344(f) read together

4. By virtue of the application being premised on sections 344(f) and 345 of Act 61 of 1973, it is well established that a court must be satisfied that:

4.1 The applicant, the petitioning creditor, established a claim exceeding R100 that is due and payable against the respondent debtor; and

4.2 The company is unable to pay its debts.

5. The question of whether these requirements are met on at *prima facie* basis if a provisional order is sought, is determined by assessing whether the balance of probabilities on the affidavits favour the applicant's case.¹

6. Corbett JA in the matter of *Kalil v Decotex (Pty) Limited and Another*² 1988 (1) SA 943 (A) found that a court can hardly decide an application for a provisional winding up of a company absent reference to the respondent's rebutting evidence. Furthermore, that "*prima facie* case" means that the balance of probabilities on all the affidavits should favour the granting of the application for a provisional liquidation.³

7. Given that the applicant seeks a final winding up order in this matter, the above stated requirements must be proven on a balance of probabilities on the affidavits before me and the test laid down in *Plascon-Evans*⁴ *Paints Limited* applies in the following manner:

¹ *The Investec Bank Limited v Hugo Amos Lambrechts N O and Others* (6570/2014), unreported judgment 27 November 2014 at para D.

² *Kalil v Decotex (Pty) Limited and Another* 1988 (1) SA 943 (A) (*'Plascon-Evans'*).

³ *Id* at 979 (A).

⁴ *Plascon-Evans* at 634

"It is correct that, where in proceedings on notice of motion disputes of fact have arisen on the affidavits, a final order whether it be an interdict or some other form of relief, may be granted if those facts averred by the applicant's affidavit which have been admitted by the respondent together with the facts alleged by the applicant, justify such an order."

8. The respondent is indebted to the applicant, as at 2 December 2021, in the amount of R708 091.58 in terms of a written agreement of loan concluded between the parties on 16 March 2020.

9. The applicant alleges that the respondent is in breach of the loan agreement by virtue of the respondent's failure to maintain the repayment of the monthly instalments as they fall due, and consequently the entire accumulated indebtedness under the loan became due and payable by the respondent.

10. The loan was conditional upon certain securities being provided including a mortgage bond held over the respondent's immovable property held under deed of transfer FT [...](‘the property’).

11. The applicant alleged that as at 6 April 2021 the respondent was in arrears of R28 821.55 in respect of payment of instalments due under the loan.

12. A letter of demand in terms of s 345 of Act 61 of 1973 was delivered to the respondent's registered office by registered post and by the sheriff on 7 May 2021.⁵

13. The respondent denied the alleged arrears on the loan but failed to state when the arrears were paid or in what amounts and

⁵ CaseLines 001-80.

on which dates. No documentary proof of the alleged payment was provided by the respondent and other than the averment of payment of the arrears, nothing further in that regard was placed before the Court by the respondent.

14. Furthermore, the applicant countered the respondent's allegation of payment by furnishing an updated certificate of balance to the replying affidavit reflecting the arrear amount due under the loan as at 2 December 2021, being R15 787.71 and the full outstanding balance of R708 091.58.⁶

15. The respondent, in terms of its opposition to the application, denied that it was commercially and/or factually insolvent. Notwithstanding, the respondent failed to set out any facts whatsoever in substantiation of its denial of insolvency. No balance sheets, income statements or any other documents or details were provided by the respondent in substantiation of its denial.

16. The respondent alleged that the applicant holds real security in respect of the loan but that the applicant declined to execute upon that security. Once again no details of the value of the security were placed before me.

17. In effect, the respondent raised no defence to the claim for liquidation other than to submit that a liquidation of a corporate entity should be a matter of last resort.⁷

18. The respondent's failure to proffer a defence against an answering affidavit that was vague and lacking in substance, leaves me no alternative but to invoke the measure of last resort,

⁶ CaseLines 019-11.

⁷ See in this regard the case of the Indian courts in *Kridhan Infrastructure Pvt. Limited* (now known as Krish Steel and Trading Pvt. Limited) v *Venkatesan Sankaranaayan & Ors.*

begin that of a liquidation.

19. This is even more so given that there was no *bona fide* dispute in respect of the applicant's claim as envisaged in the matter of *Badenhorst v Northern Construction Enterprises (Pty) Limited*.⁸

20. The statutory demands including that of service upon the respondent's employees having been fulfilled, and by virtue of the facts and circumstances set out hereinabove, I grant the following order:

20.1 The respondent is hereby placed under final winding-up.

20.1 The costs of this application are costs in the winding-up.

I hand down the judgment.

CRUTCHFIELD J
JUDGE OF THE HIGH COURT
DATE: 5 August 2022.

⁸ *Badenhorst v Northern Construction Enterprises (Pty) Limited* 1956 (2) SA 346 (T) at 347-348.