

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

7/3/14

Case No: 29448/13

In the matter between:

CCMA, LLC

and

ROYAL LIMPOPO RESOURCES (PTY) LTD

(REG NO: 2012/220351/07)

HAAL DEUR WAT NIE VAN TOEPASSING IS NIE	
(1) RAPPORTEERBAAR: JA/NEE.	
(2) VAN BELANG VIR ANDER REGTERS: JA/NEE.	
(3) HERSIEN.	
7/3/2014	<i>[Signature]</i>
DATUM	HANDTEKENING

Applicant

Respondent

JUDGMENT

BAM J

1. The applicant applied for the final winding up of the respondent company.
2. On the day of the hearing of the application on 5 March 2014, I was informed by Mr Bolt, counsel appearing for the respondent, that Business Rescue Proceedings have been initiated by the respondent and that the application had already been issued by the Registrar. The Business Rescue Application, however, was not at hand.
3. Mr Bowles, appearing on behalf of the applicant, conceded that an application for Business Rescue was apparently served on the applicant but submitted that in view of the fact that the Application is not at hand and there is no proof that it complies with the provisions of sect 131 of the Companies Act, that a provisional winding up order should be granted by the court. It was pointed out by Mr Bitter that the basis of the winding up application is not disputed by the respondent.

4. It was in fact clear that the applicant has made out a good case for the winding up of the respondent. This was conceded by Mr Bolt. Accordingly, Mr Bowles argued, the respondent will not be prejudiced if a provisional order is granted. If the respondent proceeds with its Business Rescue application the winding up procedure will automatically be suspended.

5. The issue to be decided is whether the application for the winding up of the respondent should be granted or whether it is in law suspended at this point in time. It was common cause that if the Business Rescue application complies with the provisions of section 131, not even a provisional winding-up order could be granted.

6. The relevant subsections of Section 131 of the Companies Act provides as follows:

“(1) Business rescue proceedings begin when –
(b) an affected person applies to the court for an order placing the company under supervision in terms of section 131(1)...”

and

“(6) If liquidation proceedings have already been commenced by or against the company at the time an application is made in terms of subsection (1), the application will suspend those liquidation proceedings until –
(a) The court has adjudicated upon the application;”

7. I have already alluded to the fact that I accepted that the Business Rescue application has already been lodged with, and issued, by the Registrar. Although there was no proof that the Business Rescue application complied in all respects with the provisions of section 131, I am of the view that the application for the winding-up order should not be granted at this point. It goes without saying that even a provisional winding-up order has specific legal and costs implications. The application for the winding up is not urgent and it appears that the applicant will suffer no prejudice in the circumstances if the winding-up application is postponed for a relative short period in order to afford the respondent the opportunity to furnish proof that the Business Rescue application complies with the applicable requirements..

8. Accordingly the following order is made;

1. The application for the winding-up of the respondent is postponed *sine die*.
2. The respondent is ordered to furnish documentary proof to the applicant's attorneys of record, and to file it with the Registrar, that the respondent's Business Rescue Application complies in all respects with the formal requirements provided for in section 131 of the Companies Act, No . 71 of 2008.
3. The required documentary proof referred to in 2. above must be furnished, and filed, as ordered, not later than 20 March 2014.
4. In the event of the respondent failing to comply with the order in 2. above, the applicant will be entitled to enroll the winding up application on the unopposed roll.
5. The respondent is ordered to pay the wasted costs.



AJ BAM JUDGE OF THE HIGH COURT

5 March 2014