




**REPUBLIC OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)**

**CASE NO: 68223/15**

|  |                                     |
|--|-------------------------------------|
| (1)  | REPORTABLE: YES/ NO                 |
| (2)  | OF INTEREST TO OTHER JUDGES: YES/NO |
| (3)  | REVISED.                            |
|  |                                     |
| SIGNATURE  | DATE                                |
|  | 28/6/2016                           |

24/6/2016

In the matter between:

**SECTIONAL POLES (PTY) LTD**

**PLAINTIFF**

And

**D AND ELECTRIACAL PROJECTS CC**

**DEFENDANT**

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**J U D G M E N T**

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**NAUDE AJ**

- [1] The applicants requested that a cost order be made in the liquidation application where the final order had already been granted. An order

was granted on the 26<sup>th</sup> January 2016 confirming the provisional liquidation and finally winding up the close corporation.

- [2] When the Taxing Master was approached to set down the matter for taxation, it was conveyed that no costs would be taxed in the absence of a court order awarding costs to the applicant or an agreement between the parties allowing such costs.
- [3] The applicants requested that the final liquidation order be amplified to include a costs order.
- [4] The Registrar has not had the opportunity of dealing with what was presented to me. Even in the event that what was presented was incorrect I was still requested that the position be clarified in a judgment. I give the following reasons for not amplifying the liquidation order.
- [5] A cost order need not specifically be made as the costs of sequestration and/ or liquidation proceedings follow as a matter of law (*ex lege*).
- [6] A trustee or liquidator must from the first available funds of the estate, reimburse the sequestrating creditor his taxed bill of costs in sequestrating the debtor's estate. (Section 14 (2) of the *Insolvency*

Act 24 of 1936) No claim needs to be proven for these costs, as they are part of the costs of sequestration or liquidation.

- [7] The Insolvency Act applies *mutatis mutandis* to the winding-up of a company or close corporation with regards to the costs of liquidation.
- [8] The costs described in Section 97(2) (c) of the Insolvency Act, include the taxed costs of the application.
- [9] It was stated in the matter of *Brooks v Taxing Master* 1960 (3) SA 225 (N) at 227 A that:-  
  

*"I point out that no particular order as to costs was asked for in the order prayed, nor was any mention made of costs either in the rule nisi or in the subsequent winding-up order. No question, therefore, of the proper interpretation of any order of Court arises. What seems to me to arise is a question of the proper interpretation of the relevant legislation, for it seems to me clear that the applicant's right to costs stems from such legislation and not from the terms of any order of Court."*
- [10] The provisions of the Practice Directive in this Division (Annexure "A"- appendix 1) 'Standard Order for final Liquidation', also does not require an order for costs. The proposed order simply reads:

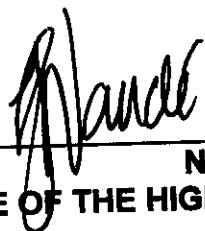
*"The above mentioned respondent is hereby placed under final winding up."*

[11] The right to costs stems from legislation and the inclusion thereof is not required in a court order. The Taxing Master therefore should not refuse to tax a bill of costs in sequestration and/or liquidation proceedings if the Court did not specifically make an order for costs.

[12] The applicants also requested that the costs that were reserved regarding a postponement in the unopposed court on the 26<sup>th</sup> October 2015 be granted. No facts were put before me to enable me to determine, whether these costs should be awarded to the applicant. The order reserving the costs stands.

[13] The only order that I make is:

12.1. The cost of this application including the costs pertaining to the 20<sup>th</sup> and 22<sup>nd</sup> of June 2016 and the Heads of argument are to be cost in the liquidation and may be taxed as part of the costs of the application for the liquidation.

  
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NAUDE AJ  
ACTING JUDGE OF THE HIGH COURT

**Counsel for the Applicants** : **Advocate PI Oosthuizen**

**Instructed by** :

**Date of Hearing** : **22 June 2016**

**Date of Judgment** : **24 June 2016**