

IN THE REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

| | |
|------------------------------------|-------------------------------------|
| DELETE WHICHEVER IS NOT APPLICABLE | |
| (1) | REPORTABLE: YES/NO |
| (2) | OF INTEREST TO OTHER JUDGES: YES/NO |
| (3) | REVISED Yes |
| DATE: | 18/07/2022 |
| SIGNATURE: | [Signature] |

CASE NO: A84/2021

DOH: 04 MAY 2022

LAAT WAAI SLAGHUIS (PTY) LTD

APPLICANT

and

DINNER WITH ME (PTY) LTD

RESPONDENT

JUDGEMENT

CORAM: MNGQIBISA-THUSI, MALI et MILLER JJ

INTRODUCTION

1. This is an appeal against a judgment handed down on 18 January 2021 by this honourable court. The issue between the parties concerned the liquidation of the respondent by the appellant a then applicant in the application for liquidation. The court which heard the application granted judgment in favor of the respondent, in simple terms it did not issue the order for liquidation.
2. Leave to appeal was granted by the same court on 9 March 2021 against its order that the respondent should not be liquidated. There was no appearance on behalf of the respondent either in person, neither on its behalf as the respondent's erstwhile attorneys filed a notice of withdrawal.
3. Appellant's complaint is that the *court a quo* erred in finding as follows:
 - 3.1 a dispute of fact existed on the papers on respondent's indebtedness to the Appellant, and that the respondent's indebtedness was disputed on *bona fide* grounds.
 - 3.2 The respondent's indebtedness to the Appellant was disputed on *bona fide* grounds.
4. In making the aforesaid findings, the Honourable *Court a quo* failed to consider either sufficiently or at all that:
 - 4.1 The exact amount of the Respondent's indebtedness was determined on the papers;
 - 4.2 The Honourable *Court a quo* had held in paragraph 4 of its judgement that the Respondent failed to make payment of the outstanding amount to the Appellant.
5. The Honourable *Court a quo* erred in relying on:
 - 5.1 The Respondent's bare denial of its inability to pay its debts;
 - 5.2 The Respondent's payment of a portion of the outstanding indebtedness.

6. The Honourable *Court a quo* erred in findings that the statement relied upon by the Appellant was unclear.
7. The Honourable *Court a quo* erred in not applying the principle laid down in various decided cases.

LAW

8. In terms of Section 344(f) of the Companies Act 71 of 1973 ("Old Act"), a Company may be wound up if: (f) the company is unable to pay its debts as described in section 345.

Section 345 of the Old Act states, "when a company deemed unable to pay its debts- (1) A company or body corporate shall be deemed to be unable to pay its debts if-

- (a) a creditor, by cession or otherwise, to whom the company is indebted in a sum not less than one hundred rand then due-
 - (i) has served on the company, by leaving the same at its registered office, a demand requiring the company to pay the sum so due; or
 - (ii) in the case of body corporate not incorporated under this Act, has served such demand by leaving it at its main office or delivering it to the secretary or some director, manager or principal officer of such body corporate or in such other manner as the Court may direct, and the company or body corporate has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor; or
- (b) any process issued on a judgement, decree or order of any court in favor of a creditor of the company is returned by the sheriff or the messenger with an endorsement that he has not found sufficient disposable property to satisfy the judgement, decree or order or that any disposable property found did not upon sale satisfy such process;

(c) it is proved to the satisfaction of the Court that the company is unable to pay its debts.”

9. Failure for a company to pay on demand a debt which is due is prima facie proof of inability to pay its debt. The Court in *Rosenbach & Co (Pty) Ltd v Singh's Bazaars (Pty) Ltd* 1962 (4) SA 593 (D) at 597 stated that:

“The Proper approach in deciding the question whether a company should be wound up on this ground appears to me ... to be that, if it is established that a company is unable to pay its debts, in the sense of being unable to meet current demands upon it, its day to day liabilities in the ordinary course of its business, it is in a state of commercial insolvency.

.. for a concern which is not in financial difficulties ought to be able to pay its way from current revenue or readily available resources”.

10. In *Absa Bank Ltd v Rhebokskloof (Pty) Ltd and Others* 1993 (4) SA 436 (C) that a company is liable to be wound-up in circumstances where the company cannot meet current demands upon it.

11. As gleaned above the law is clear that the applicant must prove that it is a creditor of the Respondent for an amount of not less than R100.00 and other requirements stated in paragraph 9 above. During the hearing of the appeal the respondent was still indebted to the appellant to the amount of more than R100.00


12. In its judgment the *court a quo* over emphasized the issue of proper reconciliation of invoices, a defence raised by the respondent meant to highlight the dispute of facts. Of significance is that the respondent does not deny owing the appellant. Upon proper application of law all other submissions by the respondent are not relevant.

13. Accordingly, I propose that the appeal must succeed and the costs to be on the liquidation.



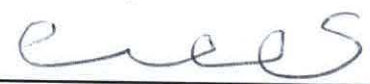
N P MALI
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

I AGREE, AND IT IS SO ORDERED.



N MNGQIBISA-THUSI
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

I AGREE.



A MILLAR
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

APPEARANCES:

COUNSEL FOR THE APPELLANT:

ADV. N G LOUW

INSTRUCTED BY:

STRYDOM & BREDENKAMP INC

NO APPEARANCE FOR THE RESPONDENT.