



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case number: 2022/019195

- [1] REPORTABLE: NO
[2] OF INTEREST TO OTHER JUDGES: NO
[3] REVISED: NO

SIGNATURE

DATE: 20 FEBRUARY

2024

In the matter between:

INTELLO CAPITAL CC

Applicant

and

VUKA MZANTSHI HOLDINGS (PTY) LIMITED

Respondent

Summary:

Final Liquidation – Commercial eviction.

JUDGMENT

Z KHAN AJ

INTRODUCTION

[1] This is an application for the final winding up of the Respondent. The Respondent was placed in provisional winding up by Carrim AJ on 24 October 2023.

The Applicant is a creditor of the Respondent in the sum of R3 838 325.48 arising from certain finance agreement concluded during 2022. The agreement is admitted by the Respondent. As security for the facility, the Respondent furnished the Applicant with an acknowledgement of debt in favour of Applicant, sureties furnished by certain third parties and a deed of cession of monies that would become payable to the Respondent by WATB Energy Group in the amount of R3 887 579.23. WATB has, in due course, also defaulted.

[2] A notice in terms of section 345 of the Companies Act was issued and the debt remains unsatisfied. The Respondent denies that it is unable to prove its debts and puts Applicant to the proof thereof.

- [3] The Respondent took three points in limine that are modelled off the same argument. The Respondent says that the agreement provides for interest at the rate of 86% per annum, is thus contrary to public policy and the National Credit Act and thus unenforceable. The Respondent refers to the agreement as 'extortionate, usurious and akin to fraud-like loan' and thus amounting to reckless lending. I do not intend dealing with these averments that were before the Judge hearing the provisional order for winding up, suffice to say that the Respondent and its sureties may raise same in any further legal proceedings.
- [4] The remaining issue is the debt of WATB. Respondent appears to labour under the apprehension that it had lost its claim against WATB when it signed off the cessions agreement in favour of Applicant. Respondents' version is thus that Applicant must now pursue WATB for the Respondents indebtedness. This is patently incorrect, in fact and in law.
- [5] During April 2023, the Respondent filed what it termed a supplementary affidavit. There is an application for condonation filed on 22 October 2023 but this interlocutory application appears not to have proceeded further. As stated, the Respondent was placed under provisional winding up on 24 October 2023. All the Respondents defences were considered by Carrim AJ before granting the provisional winding up order. I am also of the view that these defences are without merit.

[6] The Applicant has satisfied the terms of the winding up order and there are no new facts placed before this court to show reason why the provision winding up order should not be made final.

[7] In the result the following order is made:

1. The Respondent is placed in final liquidation in the hands of the Master;
2. The costs of this application are costs in the winding up.

Z KHAN

ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

This judgment was handed down electronically by circulation to the parties' and/or parties' representatives by email and by being uploaded to Caseline. The date and time for hand-down is deemed to as reflected on the Caseline computer system.

DATE OF HEARING: 20 FEBRUARY 2024

DELIVERED: 20 FEBRUARY 2024

COUNSEL FOR APPLICANT: Adv B Potsane

ATTORNEY FOR APPLICANT: Faber Goertz Ellis Austen Inc

