

THE REPUBLIC OF SOUTH AFRICA



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

Case Number: 007896/2022

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.
16 NOVEMBER 2023
DATE
SIGNATURE

In the matter between:

BELL EQUIPMENT SA LTD

Applicant

And

BZ SOLUTIONS AFRICA (PTY) LTD

Respondent

J U D G M E N T

MAKHOPA, J

- [1] This is an application in which the applicant seeks the winding up of the respondent, on the basis that the respondent is unable to pay its debts.
- [2] The applicant is BELL EQUIPMENT SALES S.A LIMITED (Registration No. 2007/031781/06), a public company duly registered and incorporated with limited liability in accordance with the law of the Republic of South Africa and having its principal place of business situated at 1 Griffiths Road, Jet Park, Boksburg, Gauteng.
- [3] The respondent is B.Z Solutions (Pty) Ltd a company duly registered and incorporated with the laws of the Republic of South Africa.
- [4] The Department of Trade and Industry (hereinafter referred to as DTI) had a programme called Black Business Supplier Development Programme hereinafter referred to as (the programme).
- [5] In terms of the programme the applicant sells heavy metal equipment (herein after referred to as the equipment) to black business that qualifies and participates in the programme.
- [6] The orders are placed on the applicant. The DTI gives the business the funding required in order to purchase the equipment.

- [7] The applicant delivers the equipment to the business pursuant to receipt of an order. The applicant invoices the business and in the ordinary course receives payment for the equipment.
- [8] It is common cause that the respondent placed an order with the applicant for eleven Martin Trailer Grid roller Machines at a total cost of R12 719 575.00. The respondent received the sum of R12 719 575.00 from the DTI but only paid the sum R8 094 275.00 to the applicant leaving a balance outstanding to the applicant in the sum of R4 625 300.00 in respect of 4 rollers.
- [9] The applicant demand payment, respondent failed to comply. The applicant brought this application in terms of section 345(1) of the Companies Act 61 of 1973 on the basis that the respondent failed to satisfy its indebtedness to the respondent.
- [10] The point *in limine* in respect of the jurisdiction was abandoned by the respondent.
- [11] In the answering affidavit on behalf of the respondent it is contended that the respondent is not involved and is not indebted to the applicant.
- [12] It is further argued by the respondent that there is no contract, undertakings or agreement between the applicant and the

respondent. Applicant acted as an agent for a government department.

[13] The applicant denies that it was an agent. The transaction documentation shows that a direct relationship between the applicant and the respondent existed.

[14] The applicant submits further that the financial statement of the respondent have not been audited or independently reviewed. The respondent's financial strength is not sound since 31 October 2022 as well as the 2021 financial statements.

[15] If the claim by the applicant is in dispute the respondent bears the onus to establish the existence of a *bona fide* dispute on reasonable ground¹.

[16] In my view when the respondent placed an order for eleven rollers with applicant a relationship and agreement of buyer and seller was established between the applicant and the respondent.

[17] The contention by the respondent that the applicant is an agent of DTI is therefore in my view not based on reasonable ground and it does not amount to a *bona fide* dispute.

¹ Kyle and others v Maritz and Pieterse Incorporated 2022 (3) All SA 223 (T).

[18] DTI only facilitated the payment but did not establish the relationship with the applicant and neither did it have any relationship with the applicant.

[19] I now deal with the concept of commercial insolvency as a ground for winding up a company. It is common cause that on the 17 June 2022 the applicant's attorneys sent a letter in terms of section 245 of the companies Act 61 of 1973 to the respondent for the balance outstanding. The respondent failed to pay the amount.

[20] Where the debtor fails to pay its debts section 245 (1) (a) of the companies Act creates a presumption that the debtor is unable to pay its debts.²

[21] According to the applicant's submission³ the respondent's own financial statements shows property plant and equipment is valued at R159 500 and intangible assets are incapable of liquidation to settle debts.

[22] Taking into account cumulatively the background facts and the financial status of the respondent and the fact that the respondent failed to respond to the payment demand by the applicant. I am of

² Body Corporate of Fish Eagle v Group Twelve Investment 2003 (5) SA 414 (w) at b428 para B-C. Afgr Operations (SCA) at para 12 and Rosenbach and Co (Pty) Ltd v Singh's Bazaars (Pty) Ltd 1962 (4) SA 593 (D) at 597.

³ CaseLines 0008-8.

the view that the applicant has succeeded to make out a proper case.

[23] I make the following order.

23.1 The respondent is hereby wound up in the hands of the Master of this court.

23.2 Costs of this application be costs in the winding-up of the respondent.

**MAKHOPA J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

HEARD AND RESERVED JUDGMENT: 16 OCTOBER 2023

JUDGMENT HANDED DOWN ON: 16 NOVEMBER 2023

Appearances:

For the Applicant: Adv C C Bester (instructed by) Fluxmans Incorporated

For the Respondent: Adv M Coetsee (instructed by) Elliott Attorneys