REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: **2025-102392**
(1) REPORTABLE: YES / NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED: YES/NO

In the matter between:

NTC GLOBAL TRADE FUND (PTY) LTD (in business rescue) First applicant

KURT ROBERT KNOOP N.O. Second applicant

and

EDWIN THABO LETOPA Respondent

and

HENDRIK BOTHA First intervening party

LOUIS BOTHA Second intervening party

ADRI BOTHA Third intervening party

HENDRIK BOTHA Fourth intervening party

DIEDERICK CHRISTIAAN DE BEER Fifth intervening party

JUDGMENT

H.A. VAN DER MERWE, AJ:

[1] This is an urgent application in which NTC Global Trade Fund (Pty) Ltd (in business rescue) (**NTC**) and its ostensible business rescue practitioner (Mr Knoop N.O.) (**the BRP**) seek two categories of orders (apart from enrolling the application in the urgent court). The first category of orders is aimed at compelling the respondent (**Mr Letopa**) to provide the BRP with information on the business and affairs of NTC. The second category has to do with compelling Mr Letopa's cooperation in allowing the BRP to assume management control over NTC. Mr Letopa is NTC's sole director.

[2] The first to fourth intervening parties are creditors of NTC. Mr N.S. Nxumalo acted for them. The fifth intervening party, also a creditor, was represented by Mr N. Deeplal.

[3] The applicants put up no resistance to the intervention of the intervening parties. Their right to participate in this matter in terms of section 145(1)(b) of the Companies Act 71 of 2008 (**the Act**) is not controversial. All five intervening parties opposed the orders sought by the applicants. Although the intervening parties set out the grounds on which the oppose the orders sought by the applicants in their applications for leave to intervene, they also sought leave to deliver answering affidavits to the founding affidavit deposed to by the BRP. As I am satisfied that the applicants made out a proper case for urgency, the applications for leave to deliver answering affidavits are irrelevant. The application was issued on 1 July 2025 and was set down to be heard on 29 July 2025, which is in my view commensurate

with the inherent urgency of the matter.[1]

[4] The fifth intervening party, apart from opposing the relief sought by the applicants also brought a counter-application. In the counter-application, orders are sought to interdict the BRP from acting as such, pending the outcome of part B of the proceedings pending in this Court under case number 2025-090556. However, as there is no case made for urgency in the counter-application, it has no place in the urgent court and thus falls to be struck from the roll with costs.

[5] The forensic history of this matter is unusual. On 7 December 2023, Marchand Van Zyl and 20 other applicants instituted an urgent application for the liquidation of NTC. I shall refer to this application as “Marchand One”. Marchand One came before Leso AJ on 21 December 2023. Leso AJ heard the parties on urgency. There is a debate among the parties on whether the merits were also dealt with in argument. On that day Marchand One was dismissed outright. On 30 January 2024, Leso AJ provided reasons for the order of 21 December 2023. From the reasons provided on 30 January 2024 it appears that Leso AJ found that Marchand One was urgent but that it was dismissed on its merits.

[6] On 19 February 2024, the same parties as were the applicants in Marchand One brought an application for an order declaring that the order of Leso AJ of 21 December 2023 is void, alternatively for it to be set aside and, crucially (for reasons to follow), for an order placing NTC in provisional liquidation. I shall refer to this application as “Marchand Two”.

[7] Marchand Two came before Hassim J on 1 March 2024. Judgement was reserved.

[8] On 4 March 2024 NTC adopted a resolution for it to be placed in business rescue in terms of section 129(1) of the Act. The resolution was registered by the Companies and Intellectual Property Commission (**the CIPC**) on 5 March 2024.

[9] On 15 April 2024 the CIPC issued a certificate, addressed to the BRP in which

[1] Luna Meubel Vervaardigers (Edms) Bpk v Makin and Another (t/a Makin's Furniture Manufacturers) 1977 (4) SA 135 (W)

it is recorded: “This hereby confirms that your notice of application dated 15 April 2024 for business rescue practitioner(s) [sic] was successful”. Confusingly, the same certificate seems to record that the date of the BRP’s appointment is 6 March 2024, but nothing turns on this.

[10] On 13 March 2024 Hassim J made an order rescinding Leso AJ’s order made in Marchand One on 21 December 2023. An order was also made placing NTC in provisional liquidation. Reasons were requested for Hassim J’s order, but to date none has been forthcoming.

[11] On 24 May 2024 Marchand Two was withdrawn and the provisional liquidation order granted by Hassim J was purportedly abandoned. The purported abandonment is obviously not effective, as a liquidation order is a status matter. However that may be, on 24 May 2024 the provisional order was discharged by the order of Ramlal AJ.

[12] In his answering affidavit, Mr Letopa contests the applicants’ case that NTC is in business rescue and that the BRP has been validly appointed as its business rescue practitioner. Mr Letopa’s case rests on section 129(2)(a) of the Act, which provides as follows:

> “A resolution in subsection (1) – may not be adopted if liquidation proceedings have been initiated by or against the company…”

[13] The intervening parties take the same point.

[14] It is at least ironic that Mr Letopa would be the one to rely on section 129(2)(a), since he is also the one who adopted the resolution and had it filed with CIPC. If he is permitted to rely on section 129(2)(a) it would bring about the unsatisfying result that he would draw a benefit from his own contravention of the Act.[2] That point was however not raised before me, probably because it would not be an answer to the intervening parties’ opposition. That said, that Mr Letopa was the one who contravened the Act is not without significance. More about this below.

[2] Wimbledon Lodge (Pty) Ltd v Gore NO 2003 (5) SA 315 (SCA) para 10

[15] None of the parties take issue with the substantive orders sought by the BRP in any other respect. The right of a business rescue practitioner to extract information from a director of the company in business rescue admits of no doubt (sections 137(2)(b) and (3) of the Act). So too is a business rescue practitioner's right and duty to assume management control (section 140(1)(a) of the Act). The top and bottom of the outcome of this application is therefore the consequences, if any, that Marchand Two has for section 129(2)(a).

[16] Mr Van Tonder, led by Mr Stais for the applicants, argued that Marchand Two does not count as "liquidation proceedings" for purposes of section 129(2)(a), due to the peculiar features of that application. Marchand Two, so his argument went, does not become "liquidation proceedings" until the order of Leso AJ is set aside, because Leso AJ's order is a bar to a liquidation application. That, after all, is why the applicants in Marchand Two were compelled to seek an order for the setting aside of Leso AJ's order.

[17] Mr Stais made a different argument. His argument was that Marchand Two was incompetent as it was brought contrary to sections 16 and 17 of the Superior Courts Act 10 of 2013. In terms of those sections, the proper course to adopt for those parties dissatisfied with Leso AJ's order, was an application for leave to appeal. That Marchand Two was improperly brought, so his argument went, is borne out by the fact that the provisional order was sought to be abandoned. Impotent as that is, it nonetheless serves to underscore the improper nature of Marchand Two, in Mr Stais' submission.

[18] In considering this question, it seems to me that one should be careful not to allow one's focus to shift from where it ought to be. The pertinent question goes to the state of affairs on 5 March 2024 (when the resolution was adopted, according to the notice issued by the CIPC of the same date). This is so as it is the mere existence of initiated liquidation proceedings that serves to bar a resolution placing the company in business rescue. It is not required that the liquidation proceedings should in time prove successful. If the resolution was valid on the day that it was filed, logically, it must remain valid until an event takes place that changes its status from valid to invalid. It might be that the resolution becomes invalid when the one or the

other event does not take place (such as the matters described in section 129(3) and (4)), but in either event, if the resolution enjoys initial validity, then it remains valid until it becomes invalid. Section 129(2)(a) does not admit of a situation where an initially valid resolution becomes invalid. So while it may be useful to consider the events that took place after the resolution was filed on 5 March 2024 that utility is limited to what it may reveal of Marchand Two as it was on 5 March 2024. Therefore, the fact that the provisional order that was granted by Hassim J was discharged on 24 May 2024 and that there was an impotent effort to abandon it, is in and of itself irrelevant, save that it may serve to reveal an inherent defect in the resolution that was present at the moment it was filed in terms of section 129(2)(b). I did not understand Mr Stais or Mr Tonder to contend otherwise.

[19] Turning to Mr Van Tonder's argument, it would be absurd to suggest that any liquidation application counts as "liquidation proceedings" for section 129(2)(a). For instance, an application issued out of a court without substantive jurisdiction, that is to say an application that could never result in a liquidation order, would probably not be sufficient to trigger the prohibition against the adoption of a resolution. The same should go for an application in which, in error, the wrong respondent is cited. Section 129(2)(a) therefore demands an enquiry into the qualities of the initiated liquidation application. How far that enquiry should go is not the business of this judgement.

[20] The issue I am to consider is whether the order granted by Leso AJ on 21 December 2023, means that Marchand Two does not suffice as "liquidation proceedings" for purposes of section 129(2)(a).

[21] The fact that it was required for the applicants in Marchand Two, in the first instance seek an order rescinding an earlier order marks it out as unusual, but does it mean that it is therefore not "liquidation proceedings" for purposes of section 129(2)(a)? This issue raises an interpretation problem, i.e. does "liquidation proceedings" as that phrase is used in section 129(2)(a) exclude an application in which a rescission of an earlier order dismissing a liquidation application, is sought? In other words, is it as Mr Van Tonder formulated it that Marchand Two does not become "liquidation proceedings" until Leso AJ's order is rescinded?

[22] Marchand Two could result in a liquidation order, despite the fact that it was necessary to first seek an order rescinding Leso AJ's order. There is no reason why the rescission and the liquidation orders could not be argued in the same hearing or why a court could not grant both orders in the same judgement. It would have been questionable if Marchand Two was prosecuted in any other way, as it would not have made sense to rescind an order dismissing an application if the same order is not sought following the rescission.

[23] Turning to Mr Stais' argument, i.e. that Marchand Two was incompetent as the only course open to its challenge was an application for leave to appeal, not a rescission application. The case for the rescission of Leso AJ's order is that an order was made dismissing the application on its merits when the parties were only called upon to make submissions on urgency. That would be a failure of justice, being offensive to the *audi alteram partem* rule and the right to a fair hearing in terms of section 34 of the Constitution. However, rule 42 is not the appropriate remedy to address the aberration. In terms of rule 42:

> "(1) The court may, in addition to any other powers it may have, *mero motu* or upon the application of any party affected, rescind or vary:
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> *(a)* An order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby;
>
> *(b)* an order or judgment in which there is an ambiguity, or a patent error or omission, but only to the extent of such ambiguity, error or omission;
>
> *(c)* an order or judgment granted as the result of a mistake common to the parties."

[24] Nor is a rescission available at common law. At common law a judgement may be rescinded on the grounds of fraud, *justus error*, upon the discovery of new documents, when a default judgement has been granted or *justa causa*.[3]

[25] However, the proposition that a liquidation *could* not be granted on Marchand Two is evidently not well made since Hassim J did precisely that. Hassim J's judgement has not been delivered, only an order, so there is no way of knowing how

[3] Erasmus Superior Court Practice (Vol 2) Revision Service 26, pp RS 25, 2024, D1 Rule 42-9

Hassim J dealt with the rescission of Leso AJ's order. It is possible that the rescission was granted by way of the development of the common law, taking inspiration from *Zuma v Secretary of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State* 2021 (11) BCLR 1263 (CC), or, conceivably in terms of section 173 of the Constitution.[4]

[26] Without Hassim J's judgement, it seems to me unwise to rule on the point if it can be avoided and it seems to me that it can be. For what follows I shall assume against the applicants that Marchand Two meets the requirements for "liquidation proceedings" as meant by section 129(2)(a).

[27] That brings me to the next question: is it open to Mr Letopa and the intervening parties to rely on non-compliance with section 129(2)(a) as a defence to the orders sought by the applicants?

[28] There is no application before me for the setting aside of NTC's business rescue proceedings or for the removal of the BRP. There is such an application pending – that is part B of the application under case number 2025-090556 referred to above. Mr Stais' argument was that the time and place for the adjudication of the validity or otherwise of the business rescue proceedings and of the appointment of the BRP, is part B of that application. For the here and now, so the argument went, the business rescue proceedings and the BRP's appointment should be taken for granted.

[29] It seems to me that Mr Peter, who appeared for Mr Letopa, is correct in his submission that his client cannot be denied a defence merely because the same issue might be pending in other proceedings. *Lis pendens*, if it applies, does not operate so as to deny a respondent a defence. It was argued before me that *lis pendens* does not apply, because the same relief is not sought in this application and in part B of the application under case number 2025-090556. It is not necessary for me to decide this point, as the operation of *lis pendens* is such as to disallow an

[4] S v S 2019 (6) SA 1 (CC) para [58]

applicant (or plaintiff), as a party claiming an order, from pursuing an order when there are other proceedings pending.[5] It does not serve to limit the range of defences available to a respondent, as a party against whom an order is sought.

[30] The point raised by Mr Peter therefore cannot be avoided, unfortunate as it is that such a vexing point comes up in an urgent application.

[31] Section 129(2)(a) is clear enough to the effect that the board of directors of a company may not adopt a resolution to place the company in business rescue if liquidation proceedings have been initiated against the company, but the consequences of non-compliance with the section are not dealt with in terms. The consequences of non-compliance with section 129(2)'s neighbours (section 129(1) and (3) and (4) respectively) are dealt with. There is no obvious reason for this omission.

[32] If the requirements of section 129(1)[6] are not met, section 130 applies. As stated above, the same section applies if sections 129(3) and (4) are not complied with. Section 130 provides as follows in relevant part:

> "**130. Objections to company resolution**.
>
> (1) Subject to subsection (2), at any time after the adoption of a resolution in terms of section 129, until the adoption of a business rescue plan in terms of section 152, an affected person may apply to a court for an order—
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> (a) setting aside the resolution, on the grounds that—
>
> (i) there is no reasonable basis for believing that the company is financially distressed;
>
> (ii) there is no reasonable prospect for rescuing the company; or
>
> (iii) the company has failed to satisfy the procedural requirements set out in section 129;
>
> ….

[5] Ceasarstone Sdot-Yam Ltd v The World of Marble and Granite 2000 CC and Others 2013 (6) SA 499 (SCA

[6] The board of directors may resolve to begin business rescue proceedings if there are reasonable grounds to believe that the company is financially distressed and, in the language of the Act, "if the board has reasonable grounds to believe that … there appears to be a reasonable prospect of rescuing the company".

(5) When considering an application in terms of subsection (1) (a) to set aside
the company's resolution, the court may—

(a) set aside the resolution—

(i) on any grounds set out in subsection (1); or

(ii) if, having regard to all of the evidence, the court considers that it is otherwise just and equitable to do so;

(b) afford the practitioner sufficient time to form an opinion whether or not—

(i) the company appears to be financially distressed; or

(ii) there is a reasonable prospect of rescuing the company, and after receiving a report from the practitioner, may set aside the company's resolution if the court concludes that the company is not financially distressed, or there is no reasonable prospect of rescuing the company; and

(c) if it makes an order under paragraph (a) or (b) setting aside the company's resolution, may make any further necessary and appropriate order, including—

(i) an order placing the company under liquidation; or

(ii) if the court has found that there were no reasonable grounds for believing that the company would be unlikely to pay all of its debts as they became due and payable, an order of costs against any director who voted in favour of the resolution to commence business rescue proceedings, unless the court is satisfied that the director acted in good faith and on the basis of information that the director was entitled to rely upon in terms of section 76 (4) and (5)."

[33] In terms of section 132(2)(a)(i), the setting aside of a resolution results in the termination of the business rescue proceedings (*Panamo Properties (Pty) Ltd and*

another v Nel NO and others 2015 (5) SA 63 (SCA); [2015] 3 All SA 274 (SCA) para [28] (*Panamo*).

[34] So far as non-compliance with sections 129(1) and 129(3) and (4) is concerned, the legislative scheme is described as follows in *Panamo*:

> "[29] Once it is appreciated that the fact that non-compliance with the procedural requirements of section 129(3) and (4) might cause the resolution to lapse and become a nullity, but does not terminate the business rescue, the legislative scheme of these sections becomes clear. The company may initiate business rescue by way of a resolution of its board of directors that is filed with CIPCSA. The resolution, and the process of business rescue that it commenced, may be challenged at any time after the resolution was passed and before a business rescue plan is adopted on the grounds that the preconditions for the passing of such resolution are not present. If there is noncompliance with the procedures to be followed once business rescue commences, the resolution lapses and becomes a nullity and is liable to be set aside under section 130(1)(a)(iii). In all cases the court must be approached for the resolution to be set aside and business rescue to terminate. That avoids the absurdity that would otherwise arise of trivial non-compliance with a time period, eg the appointment of the business rescue practitioner one day late as a result of the failure by CIPCSA to licence the practitioner timeously in terms of section 138(2) of the Act, bringing about the termination of the business rescue, but genuine issues of whether the company is in financial distress or capable of being rescued having to be determined by the court. There is no rational reason for such a distinction.
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> [30] The reason for wanting consistency, in all instances where the question of setting aside a resolution to commence business rescue arises, is apparent from section 130(5)(a) of the Act." (footnotes omitted)

[35] For business rescue proceedings to end as result of a flawed resolution or the failure to comply with the post-filing obligations, it is additionally required that there must be justice and equity in setting the resolution aside. In *Panamo* Wallis JA found that 130(5)(a)(i) is an instance where the legislature uses the word "or" when "and" would have been more appropriate. The consequence is that where a resolution to

commence business rescue proceedings falls to be set aside, the justice and equity requirements must also be met before the business rescue proceedings come to an end.

[36] The following dicta in *Panamo* also seem to me to be relevant:

> "[33] So construed the different sections are not only harmonious but also sensible and practical in their application. Under section 129 the company initiates the business rescue process and takes the procedural steps that must be followed. Under section 130 an affected person, excluding, save in special circumstances, a director who voted in favour of the resolution, may, during the period from the date of the resolution until the date of acceptance of a business rescue plan, apply to set the resolution aside either on substantive or procedural grounds. Such an application is made to court and the applicant must not only establish the statutory grounds, but also satisfy the court that it is just and equitable that the resolution be set aside. If the court grants such an order that brings the business rescue to an end.
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> [34] One further point in favour of this approach is that it largely precludes litigants, whether shareholders and directors of the company or creditors, from exploiting technical issues in order to subvert the business rescue process or turn it to their own advantage. Once it is recognised that the resolution may be set aside and the business rescue terminated if that is just and equitable, the scope for raising technical grounds to avoid business rescue will be markedly restricted even if it does not vanish altogether. That result is consistent with the injunction in section 5 of the Act that its provisions be interpreted in such a manner as to give effect to the purposes set out in section 7, one of which, as I said at the outset, is to provide for the efficient rescue and recovery of financially distressed companies in a manner that balances the rights and interests of all relevant stakeholders."

[37] As a point of departure, non-compliance with a statutory prescript leads to a nullity.[7]

[7] Standard Bank v Estate Van Rhyn 1925 AD 266 at 274

[38] However, as the facts of this matter show, the effect of treating the business rescue proceedings that ostensibly follows from a resolution that does not comply with section 129(2)(a) as a nullity can be dramatic. It will also make the Act a powerful weapon of abuse. A liquidation application is initiated for purposes of section 129(2)(a) once it is served on the company.[8] As often happens, liquidation applications may be served on a company's registered office, which may not be the place where any of its employees or managers are. The fact of the service of a liquidation application may therefore be known to only the applicant who caused it to be served. Even when the application is served on the company at its actual place of business, only the company's representatives will know of the fact of service. If a resolution is then passed and filed, there may be a multitude of third parties who know nothing of the service of the application. Once the resolution is filed and a business rescue practitioner assumes control over the company, then the creditors of the company can be expected to come to know of the business rescue proceedings, especially when section 129(3)(a) is complied with. If the creditors are unaware of the service of a liquidation application at the crucial time, they will have no cause to doubt the validity of the business rescue proceedings in which they will then be putative participants. So too may the business rescue practitioner be ignorant of the flawed adoption of the resolution. Creditors are affected by business rescue proceedings in significant ways. As creditors know that their claims are barred in terms of section 133, they can be expected to withhold suing for the debts owed to them. If the debts owed to them are on the cusp of being extinguished by prescription, them taking the sensible approach of taking part in the ostensible business rescue proceedings rather than suing may well result in them forfeiting their claims unwittingly. At the very least, the creditors and employees of the company will have wasted their time attending meetings with the ostensible business rescue practitioner which would be all for naught. Others may extend credit to the company while under the misapprehension that they enjoy the rights of post- commencement creditors. Ostensible business rescue practitioners will undoubtedly be affected in significant ways that are not limited to the fees paid to them. One can carry on in this vein for pages and still not reach the end of all the possible ways in which bona fide third parties may suffer greatly if the passing and filing of a resolution at the wrong

[8] Tjeka Training Matters (Pty) Ltd v KPPM Construction (Pty) Ltd 2019 (6) SA 185 (GJ

time means that the business rescue proceedings that follow is treated as a nullity.

[39] The conduct of Mr Letopa in this case reveals another way in which treating business rescue proceedings that follow from the filing of a resolution contrary to section 129(2)(a) as a nullity can lead to an aberration. As mentioned above, Mr Letopa himself is the one who passed and filed the resolution contrary to section 129(2)(a) according to his own case. Mr Letopa was for a time clearly content with the notion that NTC is in business rescue and that Mr Knoop was its business rescue practitioner. It goes against one's sense of justice to permit him to now upend matters by relying on his own conduct in breach of section 129(2)(a).

[40] There is no doubt sense in section 130 so far as it requires justice and equity to bring business rescue proceedings to an end, in at least two ways. First, where section 130 applies, business rescue proceedings end when an order is made in terms of the section, so that the proceedings that precede an order is not retrospectively invalidated. Second, where justice and equity demand it, the business rescue proceedings can be maintained, even though it began in a flawed manner.

[41] There is another feature of section 130 that deserves attention. In terms of section 130(1), an application for the setting aside of a resolution must be brought before a business rescue plan is adopted. The sense in this provision is not hard to see. The adoption of a plan creates new rights and obligations (section 152(4) and 154(2) of the Act). The clear purpose of limiting the time within which an application must be brought is to avoid upsetting the new rights and obligations that came to be created by the adoption of a plan. If however non-compliance with section 129(2)(a) of the kind in this case, means that the resolution and its filing is a nullity and so too the business rescue proceedings that ostensibly follow from it, then there is no time-limit within which the non-compliance may be raised.

[42] It would therefore be plainly absurd if a non-compliant resolution results in a nullity. Section 130 provides an obviously sensible and just solution to a party at the sharp end of a flawed resolution, while at the same time creating the instruments by which the rights and interests of the multitude of parties affected by business rescue proceedings can be seen to. I can conceive of no basis on which it makes any sense

to treat non-compliance any differently when it comes to section 129(2)(a). For these reasons also, it seems to me that it could not have been the intention of the legislature that non-compliance with section 129(2)(a) should be treated in such a dramatically different way, compared to non-compliance with the other provisions of section 129. The question is whether the matter can be put right in a judgement of this Court or whether it is a matter for the legislature's attention.

[43] In *Masetlha v President of the Republic of South Africa and Another* 2008 (1) SA 566 (CC) (2008 (1) BCLR 1) the Constitutional Court, at para 192, found:

> "'words cannot be read into a statute by implication unless the implication is a necessary one in the sense that without it effect cannot be given to the statute as it stands". In addition, such implication must be necessary in order to realise the ostensible legislative intention or to make the [legislation] workable. . ".'

[44] In *S v Tieties* 1990 (2) SA 461 (A) Smalberger JA said:

> "It follows from the above principles that, whereas a Court may in appropriate cases depart from the ordinary meaning of the words used in a statute, or even modify or alter such words, it may only do so where this is necessary to give effect to what can with certainty be said to be the true intention of the Legislature. Once such intention has been established the Court should not hesitate to give effect thereto. The correct approach in this regard is, in my view, that set out in Steyn *Die Uitleg van Wette* 5th ed at 68 as follows:
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> "Binne die beperkte gebied waarin die afwykende wetgewende wil wel met sekerheid vasgestel kan word bestaan daar egter geen genoegsame rede om terug te deins vir 'n woordverandering wat daardie wil sal uitvoer nie. Die beswaar dat dit nie die taak van die Regbank is om wette te maak nie, vloei voort uit 'n foutiewe opvatting aangaande die werklike aard van 'n Wet. Die mening van *Donellus* dat die wil, en nie die woord nie, die Wet maak, lyk gesond. Vir wie daardie mening onderskryf, tree 'n Hof nie wetgewend op as hy woordwysigende uitleg toepas nie, maar wel wanneer hy 'n woord wat nie die bedoeling weergee nie en daarom geen Wet is nie, tot Wet verhef."
>
> The principles enunciated above have been consistently followed and applied in our Courts. Instances thereof are to be found in the cases conveniently

collected and referred to in *Steyn* (*op cit* at 58 – 61 including footnote 133). It is clear from these principles, and the cases that have applied them, that provided it can be indisputably established that the Legislature intended something different from the ordinary meaning conveyed by the words used in a statutory enactment, a departure from such meaning is justified, even if it involves an alteration or substitution of the words used."

[45] Blignaut J found as follows in *Mercedes Benz Financial Services SA (Pty) Ltd v Dunga* 2011 (1) SA 374 (WCC) para 21:

"In principle there does not appear to be any difference between the reading in of a word to replace another word and the reading in of a word to fill a gap. In the *Tieties* judgment, as appears above, Smalberger JA referred with approval to Steyn *Die Uitleg van Wette* 5 ed at 58 – 61. The following statement in Steyn, at 60, is pertinent:

'Dat 'n woordwysigende uitleg nie in beginsel te verwerp is nie, blyk verder uit *Santy's Wine and Brandy Co (Natal) Ltd v District Commandant SA Police* 1945 NPD 118 waar die volgende uit Halsbury oorgeneem word:

. . . while terms can be introduced into a Statute to give effect to its clear intention by remedying mere defects of language, no provision which is not in the Statue can be implied to remedy an omission, in the absence of any ground for thinking that such a course is necessary to carry out the intention of Parliament.

'Positief gestel, sou ons hiervolgens kan sê dat nie alleen taalgebreke verbeter kan word nie, maar dat selfs 'n *casus omissus* aangevul kan word waar dit noodsaaklik is om daardeur aan die bedoeling van die Parlement gevolg te gee."

[46] Alexander J found in *Vauhghan-heapy v Natal Performing Arts Council* 1991 (1) SA 191 (D) at 195G-196A:

"If the plaintiff's argument is to prevail then such a requirement must be read into the statute by necessary implication - never an easy task, nor one where the Court will lightly take on the role of Parliamentary draftsman. 'If it is a casus omissus, this Court cannot supplement the Act by providing for a casus omissus, its sole duty being to construe the Act as it stands' - per Centlivres

CJ in *Barkett v SA Mutual Trust & Assurance Co Ltd* 1951 (2) SA 353 (A) at 361F. Nevertheless it has been said that 'selfs 'n *casus omissus* aangevul kan word waar dit noodsaaklik is om daardeur aan die bedoeling van die Parlement gevolg te gee' - Steyn *Uitleg van Wette* 5th ed at 60. So, for instance, where an absurdity would otherwise result - *Ngwenya v Hindley* 1950 (1) SA 839 (C) at 848; *R v Le Roux* 1959 (4) SA 342 (C) at 351; or conceivably where a 'sensible meaning' can only be given by adding 'certain words of limitation' - per MacDonald JP *in S v De Abreu* 1975 (1) SA 106 (RA) at 107C. It is, however, quite apparent from pronouncements such as these that the power in a Court to supplement the language of a statute is confined to those rare instances where incomprehensibility would be the alternative to doing so. It is necessity therefore that becomes the mother of intervention. With these severe constraints in mind it is time to examine the plaintiff's submission."

[47] It therefore seems to me that this is one of those rare occasions where there is sufficient warrant to read non-compliance with section 129(2)(a) into the grounds on which a resolution may be set aside in terms of section 130(1)(a). Approaching the problem in this way should also tend to limit, in the words of Wallis JA: "… the scope for litigious parties to exploit inconsistencies and advance technical arguments aimed at stultifying the business rescue process or securing advantages not contemplated by [the Act's] broad purposes" that would otherwise be made possible by the fact that the Act is not drafted in such clear terms as it could have been.[9]

[48] I am therefore of the view that even if Marchand Two counts as initiated liquidation proceedings for purposes of section 129(2)(a), that it is not until the resolution that was filed on 5 March 2024 is set aside in terms of section 130, that NTC's business rescue proceedings or the appointment of the BRP come to an end. The orders sought in the notice of motion should therefore be granted with costs. This matter clearly warrants the costs of two counsel.

[49] I make the following order:

[9] Panamo para [1]

(a). The first to fifth intervening parties are granted leave to intervene;

(b). The urgent counter-application brought by the fifth intervening party is struck from the roll with costs, on scale C, including the costs of two counsel;

(c). The respondent is hereby directed to provide the second applicant with:

i. information relating to the first applicant's affairs in in terms of s 137(3) of the Companies Act 71 of 2008 (**the Act**);

ii. all the books and records that relate to the affairs of the first applicant and that are in his possession in terms of s 142(1) of the Act, or, where not in his possession, to provide the applicants with the whereabouts of such the books and records; and

iii. a statement of affairs compliant with s 142(3) of the Act;

(d). For purposes of the aforegoing, the respondent is directed to provide the second applicant with:

i. an amended creditors/debentures list of the first applicant as at June 2025;

ii. the access details, credentials, login usernames, passwords and all other security measures or requirements to enable the second applicant to access, view and exercise full management control over the funds of the first applicant and its debenture holders held and traded on Pionexbot.com;

iii. the access details, credentials, login usernames, passwords and all other security measures or requirements to enable the second applicant to access, view and exercise full management control over the funds of the first applicant and its debenture holders held and traded on any cryptocurrency exchange and cryptocurrency arbitrage exchange, other than Pionexbot.com;

iv. full details of the source of the R30 million invested but not transferred to the Arbitrawallet platform (as requested in the applicants' email dated 18 May 2025);

v. the source documents used to compile annexure 'FA6' attached to the respondent’s founding affidavit filed in Part A of the urgent application in the Gauteng Division, Johannesburg (under case number 2025090556);

vi. correspondence, agreements, invoices, and any other documents

exchanged between the first applicant and Arbitrawallet (Pty) Ltd, Pionexbot.com, Pionex.com, Voxitrade and any other cryptocurrency exchange(s) and/or cryptocurrency arbitrage exchange(s) pertaining to the first applicant and its debenture holders' trading activities over the period of December 2022 to June 2025;

vii. a consolidated accounting of the investments or loans made by, or on behalf of the first applicant in and to the juristic entities, natural persons and/or trusts recorded as the first to thirteenth and fifteenth to twenty-ninth respondents in the preservation order granted by the Gauteng Division, Pretoria (under case number 2023-32147) in favour of the National Director of Public Prosecutions on 13 December 2023, and of the investments or loans made by these juristic entities, natural persons and/or trusts in and to the first applicant;

viii. a consolidated accounting of all monies paid or transferred from the first applicant's First National Gold Business Bank Account, Account number 6[…] (**the FNB Account**), between the period of December 2022 to March 2024;

ix. a consolidated accounting of all monies paid or transferred from the first applicant's Capitec Bank Business Bank Account, Account number 1[…] (**the Capitec Account**), between the period of December 2022 to June 2025;

x. the first applicant's Management Accounts for the financial period ending October 2023 (as received by the respondent from Mr Sihle Mkhize);

xi. a record reflecting the first applicant's and its debenture holders' daily trade(s) on Pionexbot.com, and any other cryptocurrency exchange(s) and cryptocurrency arbitrage exchange, for the period between December 2022 to June 2025;

xii. the daily trade(s) on any other cryptocurrency, platform, and/or cryptocurrency arbitrage platform, or the like, for the period between December 2022 to June 2025;

xiii. all correspondence exchanged with The Standard Bank of South Africa Limited, as well as the personal name(s) and detail(s) of the employee(s) of The Standard Bank of South Africa Limited with whom the respondent communicated, as referred to in paragraphs 3, 5, and 48 of the respondent's founding affidavit filed in Part A of the urgent application in in the

Gauteng Division, Johannesburg (under case number 2025-090556);

(e). The respondent, together with the first to fifth intervening parties are liable for the applicants' costs, jointly and severally, on scale C, including the costs of two counsel.

H.A. VAN DER MERWE
ACTING JUDGE OF THE HIGH COURT

Heard on: 1 August 2025,
with supplementary written submissions received from the parties on 5 and 7 August 2025
Delivered on: 15 August 2025

For the applicants: P. Stais SC with Adv L. VR. Van Tonder
instructed by SmitSew Attorneys

For the respondent: J. Peter SC
instructed by Cuzen Randeree Dyasi Inc

For the first to fourth intervening parties: Adv N.S. Nxumalo
instructed by Gawie Steyn Attorneys

For the fifth intervening party: Adv N. Deeplal
instructed by Attie Schlechter Attorneys