

IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA



Case Number: 21530/2016

4/8/17

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: NO.  
(2) OF INTEREST TO OTHER JUDGES: NO.  
(3) REVISED.

4/8/17  
DATE

SIGNATURE

In the matter between:

SOLAR TELECOMS (PTY) LTD

APPLICANT

and

DELTROSYS (PTY) LTD

RESPONDENT

Coram: HUGHES J

REASONS

HUGHES J

[1] In these proceedings, Adv. Hitchings for the applicant made mention from the bar that no heads were filed by the respondent and in addition the respondent was not

present at court at the hearing of this application. The attorney for the applicant was apparently advised that the respondent would not be attending court.

[2] The applicant is Solar Telecoms (Pty) Ltd and it seeks a final winding up order of the respondent, Deltrosys (Pty) Ltd. The basis advanced for such an order is that the respondent is commercially insolvent.

[3] The case made out on the papers by the applicant is that :

3.1 The respondent is indebted to the applicant; and

3.2 The respondent is commercially insolvent.

[4] The applicant pointed out that on the respondent's own papers in the answering affidavit the respondent the indebtedness towards the applicant is not denied by the respondent.

[5] The applicant further pointed out that from the correspondence between the parties the respondent admitted the debt when it made a "proposed pay off arrangement" with the applicant.

[6] The applicant submitted that the respondent annexed to its answering affidavit statements of its financial position as at October 2015. From these statements the applicant pointed out that the respondent had a positive credit balance of R2 462 170.00 which had declined to a negative debit balance of R593 638.00 in respect of its cash equivalent. Further, the respondent's liabilities amounted to R6 153 346.00 in the ordinary course of business whilst its cash equivalents debit was R593 638.00. The applicant pointed out that even if one took the value of the respondent's current assets which total R1 803 158.00 there would still be a shortfall of R4 350 188.00.

[7] In the circumstances set out *in casu*, I find that the *dicta* in **Boschpoort Ondernemings (Pty) Ltd v ABSA Bank Ltd [2014] 1 All SA 507 (SCA)** at para [17] is instructive. For easy reference I set same out below;

*"[17] That a company's commercial insolvency is a ground that will justify an order for its liquidation has been a reality of law which has served us well through the passage of time.*

*The reasons are not hard to find: the valuation of assets, other than cash, is a notoriously elastic and often highly subjective one; the liquidity of assets is often more viscous than recalcitrant debtors would have a court believe; more often than not, creditors do not have knowledge of the assets of a company that owes them money - and cannot be expected to have; and courts are more comfortable with readily determinable and objective tests such as whether a company is able to meet its current liabilities than with abstruse economic exercises as to the valuation of a company's assets. Were the test for solvency in liquidation proceedings to be whether assets exceed liabilities, this would undermine there being a predictable and therefore effective legal environment for the adjudication of the liquidation of companies: one of the purposes of the new Act, set out in section 7(1) thereof."*

[8] The reasons advanced for the order sought by the applicant are indicative of the respondent being commercially insolvent and having admitted that it was indebted to the applicants the applicant has indeed made out a proper case for the relief sought.

[9] It is for the reasons set out above that I granted prayers 1 and 2 as is set out in the notice of motion of the applicant. in essences the order is that :

1. The respondent company is placed under final winding up:
2. The costs of this application is costs in the liquidation.



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W. Hughes  
Judge of the High Court Gauteng Pretoria

**Appearances:**

**For the Applicant: Adv. BD Hitchings**

**Instructed by: Breytenbach Mostert Skosana Inc.**

**For the Respondent: No appearance**

**Date heard: 31 July 2017**