

**REPUBLIC OF SOUTH AFRICA**



**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION PRETORIA**

**CASE NO: 115832/23**

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
<div style="background-color: black; width: 200px; height: 15px; margin: 5px 0;"></div>	
<div style="display: flex; justify-content: space-between;"><div>01/24/2025</div><div></div></div>	
DATE	SIGNATURE

In matter between

**GOOSEN MEGA ENTERPRISE (PTY)LTD**  
**REGISTRATION NUMBER:2018/100674/07**

Applicant

and

**MTECH CONSTRUCTIONS (PTY)LTD**  
**REGISTRATION NUMBER 2017/656178/07**

Respondent

**Delivered:** This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 24 January 2025

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**JUDGMENT**

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**LESUFI AJ**

*Introduction*

[1] This is an application to place the Respondent (Mtech Constructions (Pty) Ltd under provisional liquidation in the hands of the Master of the High Court on the basis

that it is unable to pay its debts. The Respondent is indebted to the Applicant (Goosen Mega Enterprise (Pty)Ltd) in the amount of R 76 265.81, in respect of services rendered between the Applicant and the Respondent for the construction job done. Further, to have a Liquidator appointed in the Liquidation of the Respondent to investigate its financial position and its ability to repay its debts in terms of Section 364 of the Companies Act 61 of 1973(the 1973 Act).

[2] The Court has noted procedural issues raised by the Respondent in its answering affidavit. However, the Court is not going to go further with the issues raised as it does not take the matter any further and will not assist the process. The Court will therefore deal with the primary issue of liquidation.

### *Background and facts*

[3] On the 11<sup>th</sup> of November 2022, The Respondent reduced an agreement that had been discussed between the parties into writing referred to as "Appointment of Domestic Subcontractor" signed on the 11<sup>th</sup> of November 2022 as per Annexure 'C' attached to the pleadings. The agreement between the parties revolves around the construction where the initial contract was for worth R 2 704 235.65 and R 2 627 969.84 has been paid without any dispute.

[4] The Applicant attempted to make contact with the Respondent to settle the amount, due to no avail and the Respondent's failure to make payment. The Applicant issued a Notice in terms of section 345 with the intention to liquidate as per their letter dated 28<sup>th</sup> September 2023.

[5] The Respondent in its answering affidavit denies it is unable to pay its debts instead contends that the Applicant inflated the amounts and failed to submit the correct invoices. According to the Respondent an amount claimed by the Applicant in the amount of R 76 265.81 is incorrect, the correct amount would then be R 75 686.56. The Respondent further denied it refused to pay the Applicant.

[6] The Respondent's attorneys addressed a letter dated 12 December 2023 suggesting that upon receipt of an invoice an amount of R 75 686.56 will be paid into their Trust account pending the outcome of the litigation. Noted in the same letter that the difference between the amount claimed and the amount tendered is in fact R579.25. The Respondent further offered to pay on or before the close of business on

the 22<sup>nd</sup> of December 2022. It is common cause that this offer was not accepted by the Applicant.

[7] The dispute regarding the extra R579.25 stems from quantity of building material used during the construction job. This was never referred to construction expert for resolution.

### *The Law*

[8] Section 344 of the old Act is the source of authority that vests a Court with the power to liquidate a company in certain circumstances. Section 344 (1) read with section 345 (1)(a)(i) of the 1973 Act provides that:

“a company may be wound-up by a Court if it is unable to pay its debts and that the company will be deemed to be unable to pay its debts if a creditor who is owed not less than R100 serves on the company a demand requiring the company to pay the sum due and the company fails to comply.”<sup>1</sup>

[9] In *Imobrite (Pty) Ltd v DTL Boerdery CC*<sup>2</sup>, the Supreme Court of Appeal summarised the principles to be applied in cases where a debt is disputed, as follows:

“The essence of the principle is that it is wrong to allow the machinery designed for winding up orders to be used as a means of resolving disputes which ought to be settled in ordinary litigation. Although the respondent is not disputing the debt, in my view, the same principle will apply where the applicant is utilising the winding up proceedings where the debt is secured by a security in the full amount of the debt or more, rather than call on the security, in the absence of other creditors, ... Liquidation proceedings are drastic and accordingly, should be resorted to as a last option”<sup>3</sup>

[10] Winding up proceedings ought not to be used to resolve debt disputes or to enforce payment of a debt that is bona fide. Using such procedure for the purposes of debt dispute is an abuse of court process. The Court will not grant a liquidation order if the sole intention is to enforce a disputed debt. The object to winding up requires an existing debt obligation, if the debt is disputed and or yet to be enforceable by the company then this procedure cannot apply.

[11] In *Standard Bank of SA v R-Bay Logistics*<sup>4</sup>, the court said:

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<sup>1</sup> *Van Veluw Beheer Bv v Maxxliving Pty Ltd and Another* [2024] ZAGPJHC 505 at para 17. (unreported case).

<sup>2</sup> 2021 JDR 1536 (NWM)

<sup>3</sup> Id para 24-25.

<sup>4</sup> 2013 (2) SA 295 (KZD).

“Accordingly, the legislature must have intended that, to wind-up an “insolvent” company, between the date of commencement of the new Companies Act, and the implementation of intended new legislation, an applicant would have to establish one or other of the grounds for winding-up contemplated by Section 344, including, in particular, that the respondent company was unable to pay its debts.”<sup>5</sup>

### *Analysis*

[12] In this matter the Respondent in principle does not dispute that money is owed to the Applicant. The dispute revolves around the amount owed and whether the Applicant failed to submit the correct invoices or not. The issue is whether or not in the circumstances of this matter the Respondent is unable to pay its debts and whether if the Respondent is liquidated it will be to the benefit of creditors. What can be deduced from the facts of this case is that the Respondent does not refuse to pay the Applicant save to say there is a dispute of facts with regards to the amount owed. The facts also do not suggest that the Respondent is unable to pay its debt due to the Applicant.

[13] It is not the duty of the Court in the present matter to resolve dispute pertaining to whether there is any debt that exist between the parties. Neither will the Court resort to enforce a debt that is genuinely disputed by the Respondent in amounts. It is therefore clear that in this case there is no evidence of the Respondent’s inability to pay the debt owed to the Applicant.

[14] There is no evidence that the Respondent’s company is commercially insolvent and cannot pay its debts when they fall due. The Court finds that section 344 read with section 345 of the 1973 Act has not been proven and there is no solid factual foundation.

[15] I am alive to the fact that costs in normal circumstances follow the successful party and that costs are discretionary. In the circumstances of the present matter, the Applicant should have followed the normal action procedure so that the correct forum can make a determination on the amount owed. The Court is mindful of the fact that the Applicant might have approached the Court out of frustration. On the other hand,

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<sup>5</sup> Id at para 24.

the Respondent is owing the Applicant and therefore I deem it necessary not to grant any costs order.

*Order*

[16] Accordingly the following order is made

1. The application for liquidation is dismissed
2. No order as to costs



**B LESUFI**  
**ACTING JUDGE OF THE HIGH COURT**  
**GAUTENG DIVISION, PRETORIA**

**APPEARANCES:**

For the Applicant: Advocate W Venter

Instructed by: Francois Uys Inc

For the Respondent: Adv Mark Meyerowitz

Instructed by: Mr Greg Harrison of Harrisons Inc

Date of Hearing 22 October 2024

Date of Judgment 24 January 2025