IN THE KWAZULU-NATAL HIGH COURT, PIETERMARITZBURG

(REPUBLIC OF SOUTH AFRICA)

Case No: 6366/2013

In the matter between:

TABOO TRADING 232 (PTY) LTD	APPLICANT
and	
PRO WRECK SCRAP METAL CC	RESPONDENT
BARRIS VAN HOUTEN	FIRST INTERVENING CREDITOR
SKILLFULL 112 (PTY) LTD	SECOND INTERVENING CREDITOR

Case No: 7159/2013

CHARLES THEODORUS JOUBERT	APPLICANT
and	
PRO WRECK SCRAP METAL CC	RESPONDENT

JUDGMENT

C.J. HARTZENBERG AJ

[1.] This judgment deals with two separate but interrelated applications, both concerning the close corporation, Pro Wreck Scrap Metal CC, (the close corporation). The first application is one for the compulsory liquidation of the

close corporation (the liquidation application)[1] and the other, an application in terms of Chapter 6 of the Companies Act[2], to place the close corporation under supervision and to commence business rescue proceedings (the BR application). There is also an application by two creditors of the close corporation, namely one Barris van Houten and Skillfull 112 (Pty) Ltd for leave to intervene in the liquidation application, in terms of which those creditors also seek the winding-up of the close corporation (the intervention application). In what follows I shall refer to the applicant in the liquidation application as Taboo Trading and the applicant in the BR application as Mr Joubert.

Background

[2.] With regard to the liquidation application, the following happened: That application was instituted on 6 June 2013 and enrolled for hearing, on an urgent basis on 11 June 2013. On the latter date the application was postponed to 27 June 2013. That was done in terms of a direction of the Deputy Judge President. On 11 June 2013 a preliminary answering affidavit by one Mr Vernon Benjamin Newman, a member of the close corporation, was delivered. On the same date it

---

1 In terms of s 66(1) of the Close Corporations Act, 1984 (Act 69 of 1984), read with item 9 of Schedule 5 of the Companies Act, 2008 (Act 71 of 2008) (the Companies Act), the provisions of Chapter XIV of the Companies Act, 1973 (Act 61 of 1973) (the 1973 Companies Act), apply to close corporations.

2 The provisions of Chapter 6 of the Companies Act apply to a close corporation by virtue of s 66(1A)of the Close Corporations Act. References to a company therefore also apply to a close corporation.

was agreed between those representing Taboo Trading and the close corporation that the close corporation would deliver further answering affidavits by 19 June 2013 and that Taboo Trading would deliver its replying affidavits on or before 24 June 2013. As it turned out, no further answering affidavits were delivered on behalf of the close corporation. Taboo Trading's replying affidavit was however delivered on 25 June 2013.

[3.] In the meantime, and on 24 June 2013, the intervention application was delivered.

[4.] With regard to the BR application the following transpired: although the notice of motion is dated 18 June 2013, the founding affidavit deposed to by Mr Joubert was deposed to only on 26 June 2013. That is also the date when the application was lodged with and issued by the Registrar of the Court. The notice of motion states that application would be made for the relief sought at 10h00 on 27 June 2013.

[5.] On 27 June 2013, I directed that the liquidation application and the BR application be heard together. I further directed that the intervention application be dealt with, if necessary, after the fate of the liquidation application and the BR application had been determined. Counsel representing the intervening creditors indicated that those creditors would abide the decision in the other two

applications before formally entering the arena, as it were, should the need arise to do so.

The issues

[6.] The first issue which was debated was what the effect is of the BR application upon the liquidation application. Counsel for the close corporation and Mr Joubert contended that the effect of s 131(6) of the Companies Act, in the circumstances, was to suspend the liquidation proceedings. Counsel for Taboo Trading, on the other hand, contended that, on a proper interpretation and application of ss 131(1) to (3) and (6) read with s 132(1)(b) of the Companies Act, no such suspension had come about. He submitted that the events which had occurred, by the time when the matters were heard, did not trigger the suspension of the liquidation proceedings in terms of s 131(6). Counsel for Taboo Trading, therefore asked for an order provisionally winding up the close corporation. The second issue, assuming that the first issue was decided in favour of Taboo Trading, was whether it had made out a case for the provisional liquidation of the close corporation. I shall deal with each of these issues, *seriatim*.

The first issue
(Suspension of the liquidation proceedings)

[7.] s 131(1) of the Companies Act provides that unless a company has adopted a resolution as contemplated in s 129[3] an affected person may apply to a Court at any time for an order placing the company under supervision and commencing business rescue proceedings. s 131(2) provides that an applicant in terms of s 131(1) must serve a copy of the application on the company and the Commission[4] and must notify each affected person of the application in the prescribed manner. s 131(3) provides that each affected person has a right to participate in the hearing of such application. In terms of s 131(4) the Court may, after considering such application, make an order placing the company under supervision and commencing business rescue proceedings. For that happen the Court must be satisfied *inter alia* that the company is financially distressed and that there is a reasonable prospect for rescuing the company. The Court also may dismiss the application and make any further necessary or appropriate order, including an order placing the company under liquidation. s 131(6) provides as follows:

> **"(6) If liquidation proceedings have already been commenced by or against the company <u>at the time an application is made</u> in terms of subsection (1), the application will suspend those liquidation proceedings until –**
>
> **(a) the court has adjudicated upon the application; or**

---

3 That is a resolution by the board of the company voluntarily to begin business rescue proceedings and placing the company under supervision

4 The Companies and Intellectual Property Commission established by s 185 of the Companies Act (the Commission)

(b) the business rescue proceedings end, if the court makes the order applied for."[5]

s 132(1)(b), insofar as is relevant, is to the following effect:

"(1) Business rescue proceedings begin <u>when</u> –

(b) <u>an affected person applies</u> to the court for an order placing the company under supervision in terms of section 131(1)…."[6]

[8.] The words underlined in ss 131(6) and 132(1)(b) of the Companies Act, at face value, are words of general import. The two possible interpretations of these words, which were debated during argument, were these:

8.1. The mere lodging with the Registrar and the issuing of a business rescue application constitutes the event triggering the suspension of the liquidation proceedings.

8.2. Both the lodging and issuing of the business rescue application as well as due compliance with the service and notification requirements of ss 131(2)(a) and (b) of the Companies Act, are required for the suspension of the liquidation proceedings to take effect.

---

5 My underlining

6 My underlining

In interpreting and applying the provisions of ss 131(1) to (4), 131(6) and 132(1)(b) of the Companies Act, I am obliged to be guided by the principles paraphrased by Wallis JA in **NATAL JOINT MUNICIPAL PENSION FUND v ENDUMENI MUNICIPALITY**[7]**,** where he stated:

"Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alter to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used. To do so in regard to a statue or statutory instrument is to cross the divide between interpretation and legislation; in a contractual context it is to make a contract for the parties other than the one they in fact made. The 'inevitable point of departure is the language of the provision itself', read in context and having regard to the purpose of the provision and the background to the preparation and production of the document."[8]

[9.] Rogers AJ (as he then was) in **INVESTEC BANK LTD v BRUYNS**[9] assumed, without deciding that business rescue proceedings had commenced as contemplated in terms of s 132(1)(b) of the Companies Act, where such applications had been launched. By that I understand, he meant that business

---

7 2012(4) SA 593 (SCA)
8 Para [18] at 603 F – 604 D
9 2012(5) SA 430 (WCC)

rescue proceedings commenced as soon as the applications in question had been issued by the Registrar.[10]

In a number of cases involving applications in terms of the legislation governing claims for damages arising from personal injuries caused by motor vehicle accidents, the Courts have held that such applications required to have been filed with the Registrar of the Court and served, in order for the applications to have been made within the prescribed time period.[11] The reasoning in the judgments in these cases was as follows: An application of this nature, required to be brought by notice of motion. That being the case, there must be compliance with the requirements of Rule 6 of the Uniform Rules of Court. In terms of Rule 6(2) when relief is claimed against any person, or where it is necessary or proper to give any person notice of such application, the notice of motion shall be addressed to both the Registrar and such person. Any application, other than one brought *ex parte* must in terms of Rule 6(5)(a) be brought on notice of motion conforming substantially to Form 2(a) of the First Schedule to the Uniform Rules of Court and true copies of the notice and all annexures thereto shall be served upon every party to whom notice thereof is to be given. Even making due allowance for the words "application is made" in the relevant legislation to be interpreted benevolently, in favour of third parties it was not too onerous to

---

10 Paras [10] to[12] at 433 C – 434 C

11 FISHER v COMMERCIAL UNION ASSURANCE CO OF SA LTD, 1977(2) SA 499 (C)
PETERS v UNION AND NATIONAL SOUTH BRITISH INSURANCE CO LTD, 1978(2) SA 58 (D)
TLADI v GUARDIAN NATIONAL INSURANCE CO LTD, 1992(1) SA 76 (T)

require of an applicant not only to issue the application and to file it with the Registrar, but also to serve it, within the prescribed time period. It was important to bear in mind the distinction between procedural steps over which an applicant has control, like the issue and service of process, on the one hand, and steps over which he has no control, like the dates of hearing, postponements etc, on the other. A further reason why service should be regarded as a minimum requirement for the "making of an application" is that from that stage onwards it was in the power of a respondent to prevent any undue delays.[12] This reasoning, in my view, is both relevant and apposite to a consideration of the interpretation of the words "apply", "application is made" and "applies" in s 131(1), s 131(6) and s 132(1)(b), of the Companies Act, with reference to when a business rescue application may be considered to be made or had been made.

The aforesaid reasoning was also applied by the SCA[13] in **FINISHING TOUCH 163 (PTY) LTD v BHP BILLITON ENERGY COAL SOUTH AFRICA LTD AND OTHERS**[14] where one of the issues to be decided was what was meant by the term "initiated", in an interim interdict which required review proceedings to be initiated by a certain date. It was held by Mhlantla JA, that what was meant by the term in question was that notice of the application was to be given to the

---

12 PETERS v UNION AND NATIONAL SOUTH BRITISH INSURANCE CO LTD, *supra* at 60 G – H
TLADI v GUARDIAN NATIONAL INSURANCE CO LTD, *supra* at 79 D – 80 C
Cf MAME ENTERPRISES (PTY) LTD v PUBLICATIONS CONTROL BOARD, 1974(4) SA 217 (W) at 219 H – 220 D

13 Supreme Court of Appeal

14 2013(2) SA 204 (SCA)

Registrar and that the application had to be served on the affected parties by the date stipulated.[15]

[10.] For reasons with which I fully agree, Boruchowitz J, in **ENGEN PETROLEUM v MULTI WASTE (PTY) LTD AND OTHERS**[16] held that an application in terms of s 131 of the Companies Act, must be brought in accordance with Form 2(a) of the First Schedule to the Uniform Rules of Court, that is to say, in the long form of the notice of motion.[17] I also agree with Boruchowitz J that insofar as service on the Commission in terms of s 131(2)(a) is concerned, service by the Sheriff, in terms of Rule 4 of the Uniform Rules of Court is required.[18] Notification of affected persons, in terms of s 131(2)(b), must comply with the requirements of regs 7 and 124, read with Table CR3,[19] as well as the requirements of ss 6(10) and (11) of the Act.[20] I also agree with Burochowitz J that a failure to comply with these requirements constitutes an irregularity. I am alive to the criticism by Rogers AJ (as he then was) in **CAPE POINT VINEYARDS (PTY) LTD v PINNACLE POINT GROUP LTD AND ANOTHER (ADVANTAGE PROJECTS MANAGERS (PTY) LTD INTERVENING)**[21] of the appropriateness of the requirement in reg 124 that the full application must be delivered to affected parties. That criticism was

---

15 Paras [17] – [20] at 210 B – 211 B
Vide also GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN v BERENDS, 1998(4) SA 107 (Nm) at 112 H – 120 G for a comprehensive review of the authorities

16 2012(5) SA 596 (SGJ)

17 Paras [12] – [17] at 599 D – 600 C

18 Para [18] at 600 D - E

19 The Companies Regulations, 2011 promulgated in terms of s 223 of the Companies Act, by GNR 351, published in Government Gazette 34239, on 26 April 2011

20 Paras [20] – [24] at 600 G – 602 B

21 2011(5) SA 600 (WCC) para [16] at 605 B - D

endorsed by Coppin J in **KALAHARI RESOURCES (PTY) LTD v ARCELORMITTAL SA AND OTHERS[22].** For the reasons set out below, it is not necessary to pronounce on the appropriateness of such requirement in reg 124.

[11.] My views with regard to the competing contentions concerning the interpretation of particularly ss 131(6) and 132(1)(b) of the Companies Act, are as follows:

11.1. Where liquidation proceedings have commenced certain consequences ensue. In terms of s 348 of the 1973 Companies Act, the winding-up of a company by the Court shall be deemed to commence at the time of the presentation of the application to Court. In terms of s 358(a), after the presentation of an application for winding-up and before the winding-up order has been made, the company concerned or any creditor or member thereof may apply to such Court for a stay of any pending action or proceedings by or against the company. In terms s 359(1), where the Court has actually made an order for the winding-up of a company or a special resolution for the voluntary winding-up of a company has been registered, all civil proceedings by or against the company shall be suspended until the appointment of a liquidator and any attachment or execution put in force against the estate or assets of the company, after commencement of the winding-up shall be void. s 361(1) further provides

---

22 [2012]3 All SA 555 (GSJ) para [60] at 18

that in any winding-up by the Court all the property of the company concerned shall be deemed to be in the custody and under the control of the Master until a provisional liquidator has been appointed and has assumed office. s 391 obliges a liquidator in any winding-up to proceed forthwith to recover and reduce into his possession all the assets and property of the company.

11.2. Suspension of the liquidation proceedings as contemplated by s 131(6) of the Companies Act, has significant consequences, in the context where liquidation proceedings had already commenced. Clearly, such suspension may and probably will in most instances have a disruptive effect on the liquidation proceedings. Any delay of the hearing of a pending liquidation application, may in some instances have the result that a company or close corporation continue trading in insolvent circumstances.

11.3. The purpose of the notification required by s 131(2)(b), is to facilitate participation in terms of s 131(3), by affected persons in the hearing of the business rescue application. Creditors, being affected persons, in the business rescue application, also have a material interest in the liquidation proceedings. In my view, it is implicit in ss 131(2)(b) and 131(3), that reasonable notification must be given to affected persons. Short notice

which renders participation in the hearing impossible, cannot be regarded as due compliance with s 131(2)(b). There is a strong policy justification for interpreting these provisions in a way which would not facilitate a dilatory or supine approach by an applicant in business rescue proceedings. Service of a copy of the application on the Commission, and notification of each affected person, are not merely procedural steps. They are substantive requirements, compliance with which is an integral part of the making of an application for an order in terms of s 131(1) of the Companies Act.

11.4. A business rescue application is thus only to be regarded as having been made once the application has been lodged with the Registrar, duly issued, a copy thereof served on the Commission[23], and each affected person has been properly notified of the application.[24]

[12.] I proceed to consider whether the liquidation application, in this matter had effectively been suspended in terms of s 131(6) of the Companies Act by the BR application.

---

23 s 131(2)(a) of the Companies Act

24 s 131(2)(b), read with ss 6(9), 6(10) and 6(11) of the Companies Act, together with regs 7 and 124, and Table CR3

[13.] In my view, the BR application, is both substantively and procedurally fatally flawed. My reasons for such view are as follows:

13.1. At the hearing on 27 June 2013, counsel for Mr Joubert was not able to produce proof that there had been compliance, or even substantial compliance with the service and notification requirements of ss 131(2)(a) and (b) of the Companies Act. Whilst not abandoning his submission that the mere lodging and issuing of the BR application had the effect of suspending the liquidation application, he, in the alternative, asked that both the BR application and the liquidation application be postponed to 30 July 2013 to enable Mr Joubert to comply with the service and notification requirements, to produce proof thereof. The request for such postponement was opposed by Taboo Trading. Bearing in mind that the founding affidavit in support of the BR application was only signed on 26 June 2013, it is hardly surprising that counsel for Mr Joubert was unable to produce proof of compliance with the provisions of s 131(2). On my interpretation of particularly ss 131(6) and 132(1)(b), there was no proper business rescue application before me. A similar conclusion was reached by Coppin J in **KALAHARI,** where there had not been proper compliance with the provisions of s 131(2)(b).[25]

---

[25] Para [66] of the judgment at page 575

13.2. The BR application in several respects also does not comply with the requirements of Rule 6 of the Uniform Rules of Court: First, in the first paragraph of the notice of motion, it is stated that the applicant intends to make application for the relief sought on 27 June 2013 at 10h00. Yet, on page 2 of the notice of motion, the parties to whom the notice of motion is addresses are to notify the applicant's attorneys in writing within 5 days of service of the application and within 15 days of giving such notice to oppose the application, to deliver their answering affidavits. It is then stated that if no notice of motion to oppose be given, application will be made on 31 July 2013 at 10h00. Such unmitigated confusion, constitutes an irregularity. Second, assuming that the service or notification particulars of the affected persons to whom the notice of motion was addressed, are set out in the notice of motion, it is apparent that a variety of modes of service, delivery and notification would have to be employed in order to comply with the requirements of ss 131(2)(a) and (b) of the Companies Act, which included service or delivery at a physical address, notification by way of facsimile transmission and electronic notification. Assuming further that such service and notification were envisaged to take place after the application had been issued, in my view, completely inadequate notice would have been given to affected parties in order to make it possible for them to participate in the hearing of the application on 27 June 2013. This also constitutes an irregularity. Third, while the founding affidavit by Mr Joubert was deposed to on 26 June 2013, the

confirmatory affidavit by Mr Peter Banda (the Union representative), was deposed to already on 21 June 2013. Mr Banda, in his confirmatory affidavit purports to refer to and confirm certain of the allegations in Mr Joubert's affidavit. This is also an irregularity. Fourth, the founding affidavit contains no averments as are required by Rule 6(12), setting forth explicitly the facts and circumstances which rendered the matter urgent and the reasons why the matter had to be heard on 27 June 2013. Explicit reasons ought also to have been set out why Mr Joubert could not be afforded substantial redress at a hearing in due course. This failure also constitutes an irregularity. Indeed, the abiding impression one has is that the BR application had been hastily cobbled together and its lodging and issuing by the Registrar procured as a manoeuvre to thwart the liquidation application.

13.3. Whilst I am alive to the divergent views which were expressed by some Courts and writers[26], with regard to the meaning of the overarching

---

[26] SOUTHERN PALACE INVESTMENTS 265 (PTY) LTD v MIDNIGHT STORM INVESTMENTS 386 LTD, 2012(2) SA 423 (WCC) para [24] at 432 A – E
KOEN AND ANOTHER v WEDGEWOOD VILLAGE GOLF & COUNTRY ESTATE (PTY) LTD AND OTHERS, 2012(2) SA 378 (WCC) para [17] at 383 E – I
NEDBANK LTD v BESTVEST 153 (PTY) LTD; ESSA AND ANOTHER v BEDTVEST 153 (PTY) LTD AND OTHERS, 2012(5) SA 497 (WCC) paras [33] – [39] at 505 F – 507 D
AG PETZETAKIS INTERNATIONAL HOLDINGS LTD v PETZETAKIS AFRICA (PTY) LTD AND OTHERS (MARLEY PIPE SYSTEMS (PTY) LTD AND ANOTHER INTERVENING), 2012(5) SA 515 (GSJ) paras [13] – [19] at 521 A – 523 C
OAKDENE SQUARE PROPERTIES (PTY) LTD AND OTHERS v FARM BOTHASFONTEIN (KYALAMI) (PTY) LTD AND OTHERS, 2012(3) SA 273 (GSJ) para [18] at 281 F - H
PROPSPEC INVESTMENTS (PTY) LTD v PACIFIC COAST INVESTMENTS 97 LTD AND ANOTHER, 2013(1) SA 542 (FB) paras [8], [11] – [13] at 544 E – F and 545 E – H
P. Delport, HENOCHSBERG ON THE COMPANIES ACT, 71 of 2008 pages 463 - 471

benchmark requirement of s 131(4) that "there must be a reasonable prospect of rescuing the company", in my view, even at face value, Mr Joubert has not established this requirement. The annual financial statements of the close corporation as at 29 February 2012, indicate that as at that date, the current assets of the close corporation amounted to R 2 447 519 while its current liabilities were R 4 461 280. *Prima facie* the close corporation, even at that time, was certainly not in a position to pay its current liabilities as and when they fell due. Trading conditions, after 29 February 2012, were difficult for the close corporation. A host of problems are mentioned, including strikes, a fall in commodity prices (bearing in mind that the close corporation's business entails chrome beneficiation), liquidity problems, as well as a shortage of raw materials. Mr Joubert, in his founding affidavit in the BR application attached, what purports to be a draft business rescue plan. If regard is had to the draft business rescue plan, the following is evident: The plan contains projections of income and expenditure as from July 2013 to 2016. It proposes that assets of the close corporation be realised to pay creditors. Such assets are not in any way identified. What is known is that the close corporation's movable assets have been attached, in terms of a notarial bond held over such assets by Taboo Trading. The essence of the plan seems to be that it is envisaged that the close corporation would "trade itself out of" its financial distress. No suggestion is made as to sources of fresh capital to be introduced to finance the close corporation's trading activities. There are

> also no suggestions with regard to further credit which the close corporation will require to finance its working capital needs. The documents put up as part of the suggested elements of the business rescue plan, are extremely vague. Bearing in mind even the most generous consideration which one may give to what is contained in the draft business rescue plan, in my view, the close corporation's debt burden is so overwhelming, the operational constraints under which it struggles to survive so foreboding and its future prospects of trading successfully so speculative, that any notion of it being rescued is completely unrealistic.

[14.] I am also of the firm view that no useful purpose would be served to postpone the BR application either to the date proposed by counsel for Mr Joubert or to some other date. The application is fatally flawed. To provide it with some lifeline, in my view, would be prejudicial to affected persons and, may create false expectations.[27]

The second issue

(The liquidation application)

[15.] Taboo Trading relies in the liquidation application upon a claim which it has against the close corporation in terms of a written agreement,[28] concluded on 28 November 2012. In terms thereof the close corporation acquired a claim

---

[27] ENGEN PETROLEUM v MULTI WASTE (PTY) LTD AND OTHERS, *supra*, para [27] at 602 E

[28] The "Claim Purchase Agreement"

which Taboo Trading had against a company, Minco Reduction Works (Pty) Ltd (in liquidation), for a purchase consideration of R 2 250 000. In terms of the agreement the purchase consideration would be payable to Taboo Trading in instalments. The close corporation paid the first three instalments of R 75 000 each but has failed to make any further payments. On the papers, the outstanding balance owing by the close corporation to Taboo Trading, is presently some R 2 867 626,40, with interest accruing on that amount at 15,5 % per annum as from 31 May 2013. The close corporation, in the preliminary affidavit deposed to by Mr Newman, did not dispute its indebtedness to Taboo Trading. It was further admitted that it failed to make the instalment payments due to Taboo Trading in terms of the agreement for the months of March, April, May and June 2013. It was alleged however that such failure was caused by events beyond the close corporation's control. Such events, it was stated, were unexpected and temporarily adversely affected the close corporation's cash flow. It was alleged further that the close corporation's assets exceeded its liabilities by approximately R 38,3 million. In making these allegations, Mr Newman relied on what he described as a "balance sheet" of the close corporation. Perusal of the document shows however that it is indeed very generous of Mr Newman to label the document a balance sheet. What the document shows is a list of vehicles and equipment. Some of these items are subject to instalment sale agreements. The date at which the figures are reflected purports to be 28

February 2013. Scant detail is given of the liabilities of the close corporation. The document does not reflect any current assets. It is questionable whether it is proper for vehicles which are the subject of instalment sale agreements should appear on the balance sheet at all. Presumably, ownership in these vehicles had been reserved in favour of the respective sellers of the vehicles. The document certainly does not reflect any working capital or cash resources available to the close corporation.

[16.] Counsel for the close corporation conceded during argument, correctly in my view, that Taboo Trading had established that it was a creditor of the close corporation and that the close corporation was indeed unable to pay its debts as is contemplated in terms of s 344(f) of the 1973 Companies Act.[29]

[17.] Counsel for the close corporation further conceded correctly in my view, that Taboo Trading had complied with all the procedural requirements for a provisional winding-up order as set out ss 346(3),(4) and (4A) of the 1973 Companies Act. It was not contended otherwise by counsel for Mr Joubert either.

I therefore make the following orders in the two matters:

---

[29] *Vide* STANDARD BANK OF SOUTH AFRICA LTD v R-BAY LOGISTICS CC, 2013(2) SA 295 (KZD) paras [8] – [11] and [29] at 297 D – 298 B and 301 F - J

Case No 7159/2013

The application is dismissed with costs.

Case No 6366/2013

1. The Respondent PRO WRECK SCRAP METALS CC (CK 2000/05624/23) is hereby placed under provisional liquidation in the hands of the Master of the High Court, KwaZulu-Natal Provincial Division, Pietermaritzburg.

2. A Rule *Nisi* do issue calling upon the Respondent and all interested persons to show cause, if any, before this Court on Friday 6 September 2013 at 09h30 why the Respondent should not be placed under final liquidation.

3. This order and a copy of the application be served on the Respondent at its registered office, at 1 Albert Wessels Street, Newcastle, KwaZulu-Natal as well as at Units G4 and G5, Howick Gardens, Waterval Park, Bekker Street, Vorna Valley, Midrand, Johannesburg, Gauteng and Portions 155 and 154 of the Farm Elandskraal, Brits, North West, forthwith.

4. This order be published once in:

4.1 The Government Gazette;

4.2 a newspaper or newspapers circulating in Necastle, Johannesburg and Brits;

on or before 16 August 2013.

5. That the Master be requested and directed to forthwith appoint a provisional liquidator for the Respondent.

_____

C.J. HARTZENBERG AJ

DATE WHEN THE APPLICATION WAS HEARD:	27 June 2013
DATE OF THE JUDGMENT:	10 July 2013
COUNSEL FOR THE APPLICANT in Case No 6366/2013:	Adv E.L. Theron, instructed by Austen Smith Pietermaritzburg
COUNSEL FOR THE RESPONDENT in Case No 6366/2013:	Adv J.A. van Tonder, instructed by Venn Nemeth & Hart Pietermaritzburg

COUNSEL FOR THE INTERVENING CREDITORS in Case No 6366/2013:	Adv I. Sardiwalla, instructed by Shepstone & Wylie Pietermaritzburg
COUNSEL FOR THE APPLICANT in Case No 7159/2013:	Adv W. Pietersen, instructed by Geyser, Du Toit, Louw & Kitching Inc Pietermaritzburg