IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISON, PRETORIA)

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

26/02/2024

SIGNATURE DATE

Case: 2023-071935

In the MATTER between:

PRUDENTIAL AUTHORITY	**1ST APPLICANT**
THE SOUTH AFRICAN RESERVE BANK	**2ND APPLICANT**

and

HABIB OVERSEAS BANK	**1ST RESPONDENT**
PRICEWATERHOUSECOOPERS INCORPORATED	**2ND RESPONDENT**
CRAIG DU PLESSIS N.O.	**3RD RESPONDENT**
MINISTER OF FINANCE	**4TH RESPONDENT**

JUDGEMENT

KHOLONG AJ

Introduction

1. This Court is called upon to determine three inter-locking applications. The main application is a motion seeking an order for the final winding down of Habib Overseas Bank. The application is brought by the Prudential Authority and the South African Reserve Bank. First respondent is Habib Overseas Bank Limited which until it was put under provisional liquidation in 2023, was under curatorship. Second, third and fourth respondents are PricewaterhouseCoopers Incorporated; Craig du Plessis N.O and the Minister of Finance. All four respondents in this main application do not oppose the application.

2. The first secondary application arising from the main application referenced above is brought by a group of depositors styled themselves in this application as 'intervening parties'. They seek an order in terms of which they are admitted as respondents in the main application in opposition to the granting of the order of the final winding down of Habib Overseas Bank Limited, the first respondent.

3. The second secondary application arising from the main application is an application for postponement. The purpose of this application being to allow the intervening parties, if admitted into the matter, continued time to seek what they term potential investors and access to information that would allow these group of potential investors, in applicants' view, time to evaluate whether they may have an appetite to acquire the bank in liquidation thereby preserve what the intervening parties argue is the full value of their deposits.

4. This Court has elected for convenience to hear first, the intervention application, followed by the second secondary application, which is the application for postponement. This before deciding whether to hear and determine the main application. In the result, each of these applications will be dealt with seriatim below.

Background.

5. The applicant, Prudential Authority (herein-after first Applicant in the main application) is a juristic person operating within the administration of the South African Reserve Bank. It plays, in the main, the role previously executed by the registrar of banks in South Africa. The Prudential Authority and the South African Reserve Bank (herein-after second applicant in main application) filed in July 2023 an urgent motion in this Court in terms of rule 6(12) seeking an order directing that Habib Overseas Bank Ltd (herein-after first respondent) then under curatorship, that said curatorship be terminated forthwith. It further prayed that an order for final winding up of first respondent be granted. Applicants asked the Court for an order that Ms. Zeenath Kajee be appointed as liquidator of first respondent; that the Master of this High Court be directed to appoint Ms. Kajee as liquidator within 48 hours of the Court order. The Affidavit of Ms Fundi Tshazibana, the Chief Executive Officer of 1st applicant was used in support of this application.

6. This application was granted on 8 August 2023 with the Court, after prior engagement of applicants in this main application and the intervening parties otherwise styled as a 'group of depositors' reaching an agreement which was made an order of Court in terms of which the Court ordered instead of final liquidation as originally intended by applicants on an urgent basis, provisional winding-up of first respondent. Ms. Zeenath Kajee was accordingly in terms of that order appointed provisional liquidator of first respondent.

7. Relevant to matters presently under consideration, the Court ordered that any party who have legitimate interest in the final winding up of first respondent be called upon to put forward their reasons why this Court should not order the final winding up of first respondent on 19 September 2023, which was the Court's return date. Any party who wished to file an affidavit in support of or in opposition to the final winding up were called upon to do so by 29 August 2023. Any responding affidavit to be filed by 12 September 2023.

The Intervention Application

8. On 7 August 2023, a day before the appointed date for this High Court to hear the liquidation application on an urgent basis, an intervention application was made on an urgent basis under rule 6(12) of the Uniform rules supported by an affidavit of Ahmed Ismail Desai to intervene in the main application.

9. This application was sought on the basis of direct and substantial interest of the depositors, and on the basis of public interest and potential harm to charitable institutions some of whom were depositors. The intervention application opposed the granting of the final liquidation order. Following engagement of the applicants and the intervening parties as group of depositors, and having reached agreement on the draft order, which was made an order of Court, the admission of intervening parties as group of depositors was not considered by the Court on the day of the hearing and has now been placed before this Court for consideration.

10. In this application the intervening parties seek leave to intervene on the basis of substantial interest in the matter as depositors with the first respondent, the Habib Overseas Bank, with measurable credit balance to an approximate value of R165 Million. This group of depositors in this application agreed that curatorship of the Bank should be terminated. They did not, however, agree that a final winding up order should be granted 'urgently and on shortened time periods' when the matter

was called on 8 August 2023. Their view then was that the bank should be placed on provisional winding up when the matter was heard on 8 August 2023.

11. At paragraph 18 of the founding affidavit of Ahmed Desai in support of the intervention application they proposed the following:

    18.1 Termination of curatorship.

    18.2 Protection of the depositors' interests by the appointment of a liquidator (or provisional liquidator) who will take control of the assets of the bank and ensure that they are not dissipated.

    18.3 Time for the depositors to full[y] explore the possibility of an equity transaction to recapitalize the Bank so as to allow it to continue as a going concern and for the depositors to be paid in full'.

12. They stated that the reason they prefer provisional winding up over final winding up is because a provisional winding up order will preserve the possibility of the shares in the Bank being sold. By contrast, a final order will mean that depositors are not paid in full because the liquidator will proceed to sell the assets of the bank and given that applicants are saying the Bank is hopelessly insolvent, should the assets of the Bank be realized, they will not be sufficient to pay all creditors including depositors.

13. In summary intervening parties as a group of depositors opposed the selling of the assets of the Bank which they submit would happen with final winding up; They submitted in this affidavit that the liquidator may or could in its discretion discontinue the business of the Bank; terminate contracts to which the Bank is party or take such decisions that may be prejudicial to them. That in the event the liquidator exercised their discretion in this manner, all these possibilities, may prejudice the attractiveness of the Bank to any equity transaction to recapitalize the Bank. That once the affairs of the Bank have been wound up, the registration of the Bank will be terminated.

14. Further that if a final winding up order is granted the liquidator will not be able to sell the Bank as a going concern. The liquidator will only be able to sell the assets. They deposed that the interested parties required time to fully explore this option of selling the bank as a going concern.

15. At paragraph 30 of this founding affidavit they deposed that if it transpires that the envisaged sale of shares in the Bank is hopeless, then the depositors would support the final winding up of the Bank on the return day. They make reference to a prospective buyer who, they submit, requested that his identity not be disclosed at that point with whom they were engaging on a potential transaction. That there were previous failed attempts to sell the bank which shows there is potential to sell it as a going concern.

16. This intervention application was not determined on this day as there was an agreement between the intervening parties as a group of depositors with applicants in the main application to put the bank on provisional liquidation as reflected in the Court Order of 8 August 2023.

17. On the return day they had filed a notice of opposition to the granting of the final winding up order. It is Prudential Authority's contention that this notice of opposition was filed late outside of the prescribed time limits of the order of 8 August 2023, which order seemingly was by agreement. This fact will be of some relevance below when considering the postponement application.

18. This Court is now called upon to determine this application to intervene in this matter. This application is not opposed by applicants in the main application.

19. In argument supporting the application for admission as parties, the group of depositors reminded this Court that an intervening creditor may be given leave to intervene at any stage. That the practice in insolvencies is unique as it is neither a

pure intervention nor a substitution and is sui generis from a procedural perspective[1].

20. This Court is also persuaded by the observation by Gautshi AJ[2] that:

'It is therefore not necessary that [the intervening parties] have a direct and substantial interest in the subject matter of litigation which could be prejudiced by the judgement. He has to meet the test for a joinder under rule 10(1) namely that his right to relief depends upon the determination of substantially the same question of law or fact'.

21. There is in this Court's opinion no doubt that at least 29 depositors as represented by these group of depositors with at least R165 Million of value in a bank considered for liquidation do have an interest in this Court's determination of the liquidation application and that their right to relief depends upon the determination of substantially the same question of fact.

22. This Court also takes judicial notice of the fact that the order of my brother, Justice Tolmay[3] of 19 September 2023 in effect recognized the interest of the applicants in this secondary application to this matter. In its order to extend the return date to 22 January 2024 for this Court to consider this matter. Prudential Authority and the Reserve Bank were ordered to deliver their replying affidavit to 'intervening parties' opposition to final winding up on or before 29 September 2023. Paragraph 5 of that order provided that 'Depositors/creditors represented by Larson Falconer Hassan Parsee Inc will deliver their heads of argument and practice note on or before 3 November 2023. This order whilst there was no formal granting of the order recognizing intervening parties as a party to this matter, in practice recognized their interest in this matter.

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[1] Fullard v Fullard 1979 (1) SA 386 (T)
[2] Shapiro v South African Recordings Rights Association Ltd (Galeta Intervening) 2008 (4) SA 145 (W)
[3] The Prudential Authority and Others and Habib Overseas Bank Limited and Others, 19 September 2023 case number 2023-071935.

23. This Court therefore grants the intervention application in favor of the intervening parties. The intervening parties are admitted as fifth respondents.

The Postponement Application

24. Applicants in this postponement application, the group of depositors, filed a notice of motion for postponement to a date to be arranged with the registrar on the 16th January 2024.

25. As aforesaid they re-stated their opposition to the final winding up of first respondent as initially set out in their intervention application of 7 August 2023 again in their notice of opposition for the hearing of 19 September 2023, which was a return date to hear the final winding up application. Yahya Hassan an Attorney of law firm Larson Falconer Hasssan Parsee Inc had filed an urgent intervention notice on 7 August 2023 on behalf of the group of depositors. These group of depositors, and now fifth respondents in the main application, filed a notice in opposition to the granting of the final winding up order. By agreement of the parties, following this notice of opposition, the Court then on 8 August and again on the 19th September 2023, notwithstanding their late filing of their papers, extended the return date to hear the final winding up application to 22nd January 2024.

26. This Court on 19 September 2023 kept first respondent under provisional winding up. It directed applicants to deliver their replying affidavit on or before 29 September 2023; heads of argument and practice note to be delivered on or before 13 October 2023. 'The depositors/Creditors represented by Larson Falconer Hassan Parsee Inc. were to deliver heads of argument and practice note on or before 3 November 2023.

27. In the notice of motion for postponement the group of depositors seek relief 'postponing the hearing of the main application to a date to be arranged with the

registrar, pursuant to an allocation from the Deputy Judge President'. In their affidavit outlining their reasons for opposition of this Court granting final winding up order, the group of depositors stated at paragraph 8.1 that there had not been any firm offers to purchase the Bank submitted to applicants in the winding up application nor liquidator because the prospective investors insisted on being provided with relevant financial information before they would be willing to put an offer. That the provisional liquidator refused to provide that information. That as a result, they as a group of depositors, brought application under Section 360 of the Companies Act, 1973 to compel the liquidator to provide the information. That the liquidator is opposing this application claiming she owes the Bank a duty to prevent disclosure of company information. They put to this Court that there may be conflict of interest or mala fides on the part of the provisional liquidator.

28. They contend that despite their best endeavors, they have not been able to have the section 360 application determined before the return date of this Court. Further that the fact that this Section 360 application will not have been heard before this Court's return date, 'the possibility of rescuing and recapitalizing the bank will not have been fully and properly explored. That there will be numerous potential investors who simply will not have made a firm offer to purchase and recapitalize the bank by this date.

29. They contend that the main application must again be postponed to allow the following:

    i) Section 360 application to be heard and determined;
    ii) the potential investors to consider the financial information and to submit any firm offers to purchase the Bank;
    iii) the provisional liquidator and the applicants in the main liquidation application to consider such offers;
    iv) and for the possibility of saving the Bank to be properly considered in light of the offers.

30. They contend that applicants in the main application have a duty to consider any serious offer provided it meets statutory compliance requirements. That provisional liquidator has a duty of care to the body of depositors to consider serious offers and not to frustrate such transactions so as to earn a personal profit.

31. They submit to this Court in their founding affidavit that the provisional liquidator has frustrated this effort to recapitalize the Bank by refusing to provide them with relevant information. That they have made effort to have the section 360 application heard before this present Court date, and these efforts have been unsuccessful. They submit that there is a recent firm offer which has been sent to applicants and the provisional liquidator, and the existence of this offer alone warrants the postponement as it represents a possible rescue of the Bank and is deserving of serious consideration. That considerations of prejudice and justice favor the postponement of the matter.

32. First and second respondents in this secondary application, the prudential authority and the reserve bank, filed their notice of opposition on 17 January 2024. In their answering affidavit they contend that in lieu of an order granting the postponement, the founding affidavit for postponement attempts to introduce new facts at a stage where the pleadings in the matter are closed. That applicants in this postponement application have done so without seeking leave to file a supplementary answering affidavit. Accordingly, they put to this Court that an attempt at introducing new information is inadmissible and must be struck off.

33. Further that issues raised in the founding affidavit relate to the conduct of the liquidator, which they as respondents in this postponement application, have no knowledge of, save for what has been placed before this Court. They contend that considering that what applicants in this postponement application are seeking with postponement is essentially indulgence of this Court. That in seeking this indulgence they must illustrate to this Court that it is in the interest of justice to do so. That for this Court to make this determination it must be satisfied that there is good cause for postponement. That the Court must consider whether the

postponement was timeously made; whether the explanation that has been made for postponement is full and satisfactory to interfere with the procedural right of respondents in this postponement application to proceed and the general interests of justice in wanting matters to be finalized; the prejudice to other parties; and public interest.

34. They put to this Court that considering that the role of second respondent, the Reserve Bank, is to protect and enhance financial stability. Considering further that the role of the first respondent, Prudential Authority, inter alia is to protect financial customers against the risk that financial institutions may fail to meet their obligations and assist in maintaining financial stability. That therefore in fulfilling the role of the previous registrar of Banks, the Prudential Authority, not only has the responsibility to regulate and supervise financial institutions, they also in terms of Section 68 of the Banks Act or section 166H of the Financial Sector Regulation Act ('FSR Act') the first and second respondents have a responsibility to apply timeously for the winding up of a Bank in cases of insolvency to protect financial customers.

35. Evidently, Banks have an important role to play in the economy of South Africa as they may be principal depository for the liquid funds of the general public. The safety and ready availability of these funds is essential to the stability and efficiency of the financial system. Banks are the main conduit for monetary policy between a central bank and the economy. They are a backbone for the national payment system.

36. Respondents to this postponement application put to this Court that the risk profile of banks is fundamentally different to that of other financial institutions. That with Banks there is no guaranteed repayment of deposits in the absence of any deposit insurance scheme which has been introduced by amendments to the FSR Act but does not apply to Habib Overseas Bank, the first respondent in main application. That these conditions make banks vulnerable to liquidity shortages

that might be caused by a run by depositors on a bank. That such an occurrence would have a disastrous consequences on the economy.

37. The respondents complain that this application was served on the 16th January 2024, which is four Court days before the return date to hear main application. That it is not the first time the group of depositors have attempted to delay the finalization of this matter. That they were aware of dates for filing answering affidavits in the winding up of first respondent in main application, Habib Overseas Bank, but chose to act on the eve of both court dates of 8 August 2023 and 19 September 2023 respectively. That contrary to agreed Court order of 8 August 2023 to file an affidavit in opposition by 29 August 2023, they waited to do so on 13 September 2023 leading to a postponement to hear the main liquidation application on 19 September 2023.

38. Respondents argued that applicants conduct their wish to delay finalization of this matter simply based on an uncertain expectation that Habib Overseas Bank will be saved, and in doing so neglect to properly consider the implications on the entire body of creditors to the Bank, who are depositors.

39. They put to this Court that circumstances that may have led to possible postponement, having regard to submissions made by applicants themselves, under oath, arose at the earliest on 24 August 2023, and very latest 22 November 2023. In this regard they reminded this Court of an exhibit from the attorneys of the provisional liquidator, Edward Nathan Sonnenberg (ENS) pointing to a need for a Court order to be obtained in terms of section 360 for books and records of the Bank to be disclosed. That despite knowing the position of the provisional liquidator on this question of access to information, and the return date for the final winding up hearing, they only instituted proceedings against provisional liquidator on 12 September 2023.

40. That the Reserve Bank and the Prudential Authority who are first and second applicants in the main application are not parties in the section 360 application

proceedings. That the group of depositors should have realized that the dispute with provisional liquidator may not be resolved and should have brought the application at that stage.

41. Alternatively, that the group of depositors could have brought the application on 22 November 2023 when it was clear that a date for the hearing of the Section 360 application could not be agreed. That the group of depositors consented to postponement to 22 January 2024 knowing that there is uncertainty in respect of the Section 360 application. That therefore their situation is self-imposed. That no reasonable explanation is given why the application was not brought in December. That they only addressed correspondence to deponents, Werksmans, on 14 December 2023 requesting that liquidation application be postponed to March 2024 given uncertain status of the section 360 application. That despite being called by Werksmans to timeously act on the request for a postponement, the group of depositors chose again to frustrate the matter at the last minute.

42. Respondents put to this Court that the late filing of this postponement application is prejudicial to the large body of creditors, who are mainly depositors, and to whom they also have a duty. That there are costs implications in prolonging the matter any further to the prejudice of the large body of creditors, mainly depositors. That there is no guarantee that once the order in the Section 360 application is heard and granted, that such order will not be subject to appeal, which event will be to the further prejudice of large body of depositors.

43. Respondents reminded this Court that the group of depositors are only 29, and a tiny minority in number and value of deposits. That the respondents as statutory regulators act in the interest of all depositors, and the nature of this matter requires swift determination. That applicants seek to drag respondents into a dispute they have with duly appointed provisional liquidator on an uncertain belief that they will be successful in obtaining confidential information they require for the benefit of a potential buyer who may not even proceed with acquiring the bank.

44. Respondents contended before this Court that there is no dependency or conditionality attaching to the final winding up of the bank. That granting the postponement application would result in the bank remaining in provisional liquidation over an extended period of time and continuing to incur costs in circumstances where the provisional liquidator would have to maintain the assets including the costs of experts thereby harming the potential return of depositors.

The Law

45. It was held by Schutz JA[4] that a party opposing an application to postpone has a procedural right that the matter should proceed on the appointed day. That it is also in the public interest that there should be an end to litigation. That in order for an applicant for a postponement to succeed, he must show a 'good and strong reason' for the grant of such relief. The more detailed principles[5] were summarized by the Constitutional Court as follows:

'*The postponement of a matter set down for hearing on a particular date cannot be claimed as of right. An applicant for a postponement seeks an indulgence from the Court. Such a postponement will not be granted unless this Court is satisfied that it is in the interest of justice to do so. In this respect the applicant must show that there is good cause for the postponement. In order to satisfy the Court that good cause does exist, it will be necessary to furnish a full and satisfactory explanation of the circumstances that give rise to the application. Whether a postponement will be granted is therefore in the discretion of the Court and cannot be secured by mere agreement between the parties. In exercising that discretion the Court will take into account a number of factors, including (but not limited to):*

i) Whether the application has been timeously made;

ii) Whether the explanation given by the applicant for postponement is full and satisfactory;

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[4] McCarthy Retail Ltd v Shortdistance Carriers cc [2001] 3 All SA 236 (a) at 28.
[5] National Police Service Union and Others v Minister of Safety and Security and Others 2000 (4) SA 1110 (cc)

iii) Whether there is prejudice to any of the parties; and

iv) *Whether the application is opposed.*'

46. This Court is mindful that whilst postponement is not a right open to applicants, and is discretionary, a Court or tribunal must bring its mind to bear on the facts and factors obtaining in each case having regard to prevailing circumstances. It is also appropriate that Courts must always be mindful of any potential prejudice which refusal of postponement may occasion on litigants[6]. Steyn C.J noted that Courts had to weigh the rights of litigants, and in the event of refusal to postpone weigh the impact thereof on those rights. Failure to do so may itself be an irregularity.

47. On the facts of that case, Steyn CJ observed that failure to postpone may be open to attack if '…it is said to be illegal, or to be a denial of justice in the sense that it deprived the appellants of any right or set in train prejudicial results which they could not avoid, once a postponement was refused'.

48. In these present circumstances, this Court finds merit with the argument of respondents in opposition to the postponement application. This Court finds that a need for postponement, as advanced by applicants, which is the Section 360 application arising from what they allege to be provisional liquidator's refusal to disclose confidential information related to the operational and financial position of the bank, arose at the earliest on 24 August 2023 or at the very latest 22 November 2023. No adequate nor satisfactory explanation has been given to this Court why the group of depositors elected not to take action then. Nor when they realized that their opponents in the section 360 application are not available with the impact which that might have on their interest in the main application whose return date, at their instance, is before this court today.

49. Correspondence addressed to applicants from Edward Nathan Sonnenberg (ENS) dated 18 August 2023, in response to applicants' letter of 14 August 2023, point

[6] Ismail and Others v Additional Magistrate, Wynberg 1963 (1) A.D at 6D.

applicants to various compliance requirements relating to furnishing of financial information of the bank in terms of the Banks Act. It also points out that in terms of the Companies Act, 1973 a Court order needs to be obtained in respect of the books and papers of the bank. This they point out would be in addition to any confidentiality undertaking and compliance with any 'other statutory requirements' relating to information sought. This position of the provisional liquidator is restated by ENS in their correspondence to applicants of 21 August 2023.

50. What follows is back and forth between applicants to this postponement application and provisional liquidator culminating in the opposed section 360 application. This Court agrees that first and second respondents to this postponement application are not party to this dispute between applicants and the provisional liquidator. This dispute between these two parties culminates in an order by my brother Mkhabela J of 19 September 2023 under case number 2023-092274 setting out the agreement of the disputing parties in that matter to exchange pleadings and heads of argument up to and including 7 November 2023 where parties after papers had been filed were to approach the deputy Judge President or registrar for a hearing of the application soon after 7 November 2023.

51. In their correspondence of 22 November 2023 ENS for provisional liquidator point out to applicants that in their view as previously recorded the section 360 application does not have to be heard prior to the liquidation application. They proceed to set out their availability for a hearing on 17 January 2024 and various other dates up to February 2024, which date is after this Court's return date.

52. They only draw respondents more directly into the matter on 14 December 2024 pointing to the Section 360 application against the liquidator. At paragraph 8 of this correspondence they state that they are making an early approach to respondents with the hope of agreeing to adjourning the matter to a date post 25 March 2024. In their response Werksmans for respondents point out to applicants that they have pointed to them on multiple occasions that nothing precludes them

or their clients from concluding any transaction once Habib Overseas Bank Limited is in final liquidation. At paragraph 2 of this correspondence, they point out that 'Your client's desire to ignore this sentiment and seek to continuously delay finalization of the matter is extremely prejudicial to all creditors. They proceed to record their opposition to the postponement to a date following 25 March 2024. They advice applicants that in the event they sought to proceed with postponement they must make substantive application for postponement 'long in advance'.

53. What follows is no satisfactory explanation to this Court on why applicants waited until 16 January 2024 to file their postponement application. This Court finds that applicants have been at best lackluster in their observance of the rights of creditors, who are mainly depositors of the bank in having this dispute expeditiously finalized. That the filing of this application cannot reasonably be considered, in this Court's opinion to have been timeous. The continuous late filing of pleadings, and at times contrary to this Court's express order cannot be condoned and allowed to go unabated to the detriment of the general public and all creditors.

54. This Court also finds that applicant's effort to introduce new set of facts after pleadings have closed and without seeking this Court's indulgence to file supplementary affidavit is inadmissible. This court also holds that even if those facts were to be admitted they are bare and meritless, after due consideration of the record before this Court, as there is no evidence to support the contention of unreasonable conduct by provisional liquidator; conflict of interest or mala fides by the provisional liquidator who has jointly been appointed by agreement of the two parties in this main application on 8 August 2023. The fact that the provisional liquidator outlines statutory requirements requiring compliance for disclosure of confidential company information or as contended by the group of depositors, have power open to her to exercise as provisional liquidator or have fees they may stand to benefit from or otherwise be entitled to provided they exercised their power judiciously, that cannot in and of itself and with the

evidence before this Court, be said to constitute prima facie mala fides or conflict of interest in the absence of any other extraneous evidence, considering also the fact as reflected in this Court's record that the provisional liquidator is dealing with non-committal parties with no obligations to first respondent with respect to any transaction nor confidentiality.

55. Having regard also to the fact that the transaction of buy-out as envisaged by the group of depositors as may arise from the Section 360 application outcomes, can happen at any time even during liquidation. This Court therefore concludes even on this basis that the two applications are not dependent on each other. Nor will determination of one set in motion a train of events that may be prejudicial to the whole body of depositors of first respondent as contended by applicants for postponement.

56. This Court concurs with respondents that there were at least 3 occasions where circumstances that may lead to a postponement became apparent and applicants were not judicious in their actions. They waited for about four Court days before the return date of a final liquidation application, which application itself was postponed to accommodate them at least on two occasions from 8 August 2023.

57. In any event this Court does not find prejudice to applicants with liquidation application being heard, in the interest of justice, given that the matters being canvassed separately in the section 360 application can still be pursued even if the liquidation application was to be finalized in respondents' favor as there is no bar to a transaction being concluded even after liquidation if it were to be granted by this Court. As facts stand before this Court there is no firm offer to purchase Habib Overseas Bank. What this Court has on record is at best an expression of interest, which is non-binding to applicants' clients per exhibit YH1, Sainsbury

Investments (Pty) (LTD. There is also no tentative offer of a purchase price subject to usual due diligence.

58. This Court therefore finds with respondents in this postponement application that the application was not by any stretch timeously made, on at least three available occasions where factors that may have led to postponement arose. That there is no full and satisfactory explanation for the delays up to 16 January 2024. This Court finds that any further postponement will on balance be prejudicial to the respondents and the general public as contended by respondents. That therefore respondents had merit in their opposition. Accordingly, the postponement application is dismissed with costs.

Main Liquidation Application

59. This is a return date of a rule nisi issued out of this Court pertaining to the liquidation application of Habib Overseas Bank (first respondent), first heard by this Court on 8 August 2023. The Court by agreement of the parties, following an urgent intervention by a group of depositors dealt with elsewhere in this judgement, in its discretion, by order of my brother Van Schyff J was put on provisional winding up. All parties with legitimate interest in the final winding up were called upon to put forward their reasons why this Court should not order the final winding up of first respondent on 19 September 2023. Interested parties were called upon to file affidavits by 29 August 2023. Any responding affidavit was to be filed by 12 September 2023.

60. In terms of paragraph 7 of that order a copy of this order was to be served on persons listed in the manner prescribed in section 346A of the Companies Act 61 of 1973; it was also to be served on first respondent at its registered address; sent to all known creditors and depositors by email; and published in the government

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gazette and citizen newspaper. The order was served and published in line with this Court's order.

61. In response to this order as referenced elsewhere in this judgement above, Yahya Hassan on behalf of a group of depositors (group of depositors) filed an affidavit in opposition to the grant of final winding up order on 13 September 2023. This followed on their urgent application to intervene in this matter on 7 August 2023 leading to judgement by agreement of 8 August 2023. The return date of 19 September 2023 was extended by my brother Tolmay J. on 19 September 2023, following late filing by respondents of their affidavit in opposition, with the order that the return date is 22 January 2024, before this very Court. First respondent was kept under provisional liquidation and applicants were ordered to file their replying affidavit which they did on 29 September 2023.

62. It is opportune at this point to recap on chronology of events that appear common cause. First respondent was both registered as a Company and received its trading license for banking in 1990. Its latest available audited accounts are for the year ended 31 December 2021. Its auditors, BDO South Africa has not been able to audit its books subsequent to this date. Some of the concerns raised was that the audit could not be conducted for at least two years; financial information is unreliable. BDO raised auditor queries around completeness, accuracy and reliability of financial information. There were also concerns raised about the vacancy of Head of Finance and IT systems control issues.

63. The net asset value of respondent has declined from R137.8 Million as at December 2018 to a negative net asset value in May 2023 of minus –R114 million before taking into account the costs of curatorship. Respondent does not have sufficient liquidity to pay its creditors, including depositors, if the moratorium placed by the curator before provisional liquidation was to be lifted. Put differently, there is a real risk of a run on the bank. The depositor and customer base has decreased from R1.333 Billion in 2018 to R692 million in 2023 and net loans and advances have declined from R518 million in 2019 to R253 million in

2023. First respondent has incurred losses since 2020 with no reprieve in sight according to the curator. The operating cost to income ratio has doubled from 84% in 2018 to 195% in 2022.

64. Consequently, on 9 June 2023 the curator, Craig Du Plessis writes to first applicant, as registrar of banks with regulatory and supervisory role over first respondent in terms of the Banks Act and FSR Act stating that in his opinion he does not think that continuation of curatorship will enable first respondent to pay its debts or meet its obligations and become a successful concern as contemplated in the provisions of Section 69(2)(D) of the Banks Act 94 of 1990. The curator had raised a myriad challenges experienced by the Bank from governance challenges; challenges in internal controls; systems, IT and operational challenges. The curator then requested direction from applicants. This evidence of the curator, placed before this Court by applicants, The Prudential Authority and the South African Reserve Bank remains unchallenged in evidence.

65. This state of affairs is preceded by a letter addressed to applicants by the then non-executive chairman (exhibit FA5) addressed to first applicant reflecting on a number of challenges they as the then leadership and Board of first respondent, Habib Overseas Bank Limited experienced, from resignation of 3 independent directors to what they reported to be a projected loss of R41.3 Million for the 2023 financial year.

66. Applicants put to this Court that as at the date of application to this Court for liquidation there had not been any credible commercial investor expressing interest in the bank. It is now common cause that a group of depositors subsequently came on record at least on 7 August 2023 with the intervention and opposition application.

67. In the meantime national treasury had in June 2023 announced a repayment mechanism, based on the guarantee provided to facilitate repayment by the South African Reserve Bank of up to R100 000 per qualifying depositor of respondent

and this repayment mechanism commenced in June 2023. As at 20 July 2023 payments amounting to R48.5 million had been made to approximately 70.29% of qualifying depositors. In their replying affidavit applicants put to this Court that the minimum capital required for respondent to be financially sustainable is minimum R364 million, factoring in the negative net asset value, given the minimum required statutory capital of R250 Million. They put to this Court that the fact that they as applicants paid out R48.5 Million on behalf of first respondent in and of itself makes them a creditor to first respondent. In a nutshell these are facts and state of affairs placed before this Court by applicants. This state of affairs led to them lodging on an urgent basis a liquidation application in July 2023 which was met by opposition on 7 July 2023 and events as already referenced above.

68. In their affidavits in opposition to granting the final winding up order, the group of depositors submitted to this Court that they are opposed to a final winding up order being granted on the return dates of both 19 September 2023 and later 22 January 2024 because of the progress they had made identifying prospective purchasers and as referenced elsewhere the challenges brought by the section 360 action they instituted elsewhere in this Court to force provisional liquidator to provide them with information relevant to their clients, for their clients to consider whether or not to make an offer to purchase first respondent.

69. The depositors put to this Court that putting first respondent under liquidation would lead to asset stripping by liquidator thereby affect the attractiveness of the bank to be acquired as a going concern. They had agreed on a return date of 19 September 2023 to gauge market interest in acquisition of the first respondent. If there was no market appetite, depositors accepted, as reflected in paragraph 9 of their affidavit that the Bank should be wound up. They put to this Court that there has been substantial interest in potential acquisition and recapitalization of first respondent. That they require more time to explore the possibility of these transactions with interested parties and finalize the section 360 application for access to information.

70. The group of depositors sketch in their affidavit various engagements they had with various parties including Sainsbury Investments, which will be more relevant below. They point out at paragraphs 32 to 35 that Sainsbury is a special purpose vehicle led by a director, Dr. Govender who claims to have received from a third party funder what he terms 'informally expressed…support to fund the acquisition', this from one of the state lending institutions in the Republic. That Dr. Govender of Sainsbury made it clear to them that an offer would only be submitted after he had received and considered certain financial information pertaining to the first respondent. There are no confirmatory affidavits filed by all these parties including Dr Govender of Sainsbury. As a result, for whatever it is worth, this information is hearsay evidence and not much weight, weighed against all other evidence before this Court can be placed on it.

71. For whatever it is worth, at paragraph 44 the group of depositors point out that these prospective purchasers require certain financial information; books and records. This includes latest audited financial statements; Banking records reflecting the size of deposits and the size of loans; the curator's report and the record of fees paid to the curator; The details pertaining the banking platform (the software) used by the Bank; and payroll details.

72. They point out that they addressed a letter to liquidator requesting this information on 14 August 2023. On 18 August 2023 the attorneys of the provisional liquidator as dealt with elsewhere in this judgement responded advising on the need for a Court order before such information could be disclosed. What follows is then exchange of correspondences with provisional liquidator referenced elsewhere in this judgement. They point to this Court that they then sought assistance of the second applicant, the reserve bank to assist resolve the impasse with provisional liquidator, but that they declined to assist.

73. In their reply, applicants point to this Court that the group of depositors do not dispute the fact that first respondent is hopelessly insolvent. They point out that

the answering affidavit fails to address, in any way, the financial position of first respondent; nor its inability to function effectively as a banking institution due to the unsustainability of its business model; compliance challenges; governance; operations; accounting; IT systems and lack of necessary skills and expertise from overall staffing perspective. They point out that the answering affidavit in opposition fails to address in any way, the pertinent issues raised by the curator leading to their recommendation to have first respondent wound-up.

74. Applicants contend that no meaningful details or information relating to prospective purchaser had been disclosed. That vague and unsupported information is provided, and which can at best be said to be a list of suitors or middlemen who would be interested in looking for potential suitors. That allegations contained in the answering affidavit constitute hearsay as no confirmatory affidavits have been filed. That the answering affidavit cannot therefore be said to be truly, an affidavit in opposition to the final winding up of first respondent. That at best it is a plea for more time to establish whether there are prospective buyers. That it fails to address the factual basis of why first respondent should not be finally wound up, at this time, based on its financial position and having regard to operational challenges it faces.

75. Applicants point out that the fact that there may be a potential buyer in future of the assets or shares of first respondent, is not a basis for the refusal of a final winding up order. That there is no reason why a liquidator cannot deal with these transactions as they arise under a final winding up order. In the light of the above they contend that opposition to final winding up should be rejected.

76. In argument applicants pointed out that it is in the interest of creditors of first respondent who are mainly depositors, that it be finally wound up. That after final winding up the liquidator can proceed to pay creditors even if it is just a percentage of their claims. That the delay will further prejudice the creditors, who are mainly depositors. They contend that the reserve bank, second applicant has as aforesaid already started paying out to depositors up to R100 000 of their deposits

to avoid hardships arising from the collapse of the bank. This was because first respondent could not make these payments. That therefore second applicant is a creditor in first respondent for the amounts it has paid to depositors on behalf of first respondent. That depositors cannot receive any further payments until a liquidator can distribute further amounts and that will not occur under provisional liquidation. That extending liquidation beyond the period absolutely necessary will simply increase the costs of first respondent to the detriment of creditors and depositors. The point out that the main reason the group of depositors seek to continuously extend the date for final liquidation is in the hope of finding an acquirer of the bank who will keep them whole. But that as a statutory regulator they are duty bound to act in the interests of all depositors, not only a handful. Further that as statutory regulator they cannot make decisions on future uncertain events. That they cannot, based on limited information in the answering affidavit, responsibly delay what appears inevitable based on the hope that a transaction may materialize, which at present is nothing more than an expression of interest.

77. Applicants point out to this Court that the fundamental status of the bank has not changed since provisional liquidation, but that the financial position has deteriorated because of increased costs. They contend that first respondent has suffered serious reputational damage due to regulatory and reporting non-compliance; poor governance and operational failures. That there is no reliable financial information in the Bank.

78. Applicants argue that the process the group of depositors wish to undertake through a potential acquisition can still occur during final liquidation as envisaged in the Banks Act 98 of 1990; the Insolvency Act 24 of 1936 and the Companies Act 61 of 1973. That as applicants they have advised the group of depositors of this fact. In this regard they drew this Court's attention to exhibit RA2 and YH11 correspondences. They contend that in the normal cause of business these processes take time and are often uncertain as they may require other regulatory approvals in the event of acquisition.

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79. In the light of the afore-going, this Court is satisfied that the first respondent is as a matter of fact, commercially insolvent. It is also satisfied that due notices to interested parties have been made. This Court, on the evidence presented, is satisfied that applicants have made out a case for final winding up of first respondent. It is this Court's view that opposition by the group of depositors does not assist this Court in present circumstances to resolve the question of factual or commercial insolvency. That at best the intervention of the interested group of depositors is to allow indeterminate exploration by third parties, not before this Court, to potentially salvage the bank. This, however, does not respond to the established fact of insolvency but whether it would be just and equitable for this Court in exercising its discretion to order final winding up of first respondent.

The Law

80. Much was made in argument by both Counsels for applicants and respondents about whether this Court in exercising its discretion, on its consideration of the question of final winding up must construe its discretion as narrow or broad. Further, in the event that its discretion was construed to be broad, this Court could exercise its discretion in respondent's favor. On the other hand, if this Court found that its discretion was narrow, then what follows resolution of the question of discretion would be consideration of relevant applicable provisions in considering the question of final winding up of first respondent either in terms of Section 68 of the Banks Act[7] or Section 166H of the Financial Sector Regulation Act 9 of 2017 ('FSR Act').

81. Counsel for the group of depositors contended that the bank was never placed under resolution as contemplated in Section 166 of the FSR Act, which condition aught to precede in his view liquidation, in the event this Court were to arrive at that conclusion.

[7] Banks Act *No* 94 of 1990.

Discretion

82. It is trite that the Court has discretion to grant a final winding up order. Section 344 of the Companies Act 61 of 1973 (the 1973 Companies Act) vests a Court power to liquidate a company[8]. Section 344 provides the following:
'*The Court may grant or dismiss any application under section 346, or adjourn the hearing thereof, conditionally or unconditionally, or make any interim order or any other order it may deem just...*".

83. The Court's power to order winding up of a company is a discretionary remedy[9]. In the Imobrite case the two types of discretion were characterized by the Court as discretion in the 'strict/narrow/true sense' and discretion in the 'broad/wide/loose sense'[10]. The Court in Imobrite observed that when used in a loose sense it often indicates no more than application of a value judgement. So if exercised in a loose sense of a value judgement, such discretion is open to any interpretation and intervention by any Court, using as it may be entitled to, a different sets of values Courts may if used in a loose sense arrive at different conclusions. On the facts of that case the Court reaffirmed the ratio in Afgri Operations Limited[11] that an unpaid creditor has a right, ex debito justitae, to a winding up order against a company that has not discharged its debt. It reaffirmed the principle that the refusal of a winding up order under such circumstances entails the exercise of a narrow discretion.

84. The mere fact that there may be indeterminable extraneous factors which do not in and of themselves resolve the objective fact of commercial insolvency enjoins this Court, in the interest of justice, to be slow entering that terrain. In Boschpoort

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[8] Imobrite (Pty) Ltd v DTI Boerdery cc 2022 JDR 1554 (SCA) at para 12.
[9] F and C Building Construction Co (Pty) Ltd v Macsheil Investments (Pty) Ltd 1959 (3) SA 841 D
[10] Trencon Construction Pty Ltd v Independent Development Corporation and Others (2015) ZACC 22; 2015 (5) SA 245 (CC).
[11] Afgri Operations Limited v Hamba Fleet (Pty) Ltd SA 91 (SCA) para 12.

Ondernemings (Pty) Ltd v Absa Bank Limited[12] it was observed that for decades our law recognized two forms of insolvency: factual insolvency (where a company's liabilities exceed its assets) and commercial insolvency (a position in which a company is in such a state of illiquidity that it is unable to pay its debts, even though its assets may exceed its liabilities. This Court observed that:

'*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 viscious than recalcitrant debtors would have a Court believe; more often than not creditors do not have knowledge of the assets 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*'[13]

85. This Court concurs that it cannot construe its discretion so wide as to entail acceptance of indeterminable subjective factors to trump the right and duty applicants have to the general public and large body of depositors and majority depositors they represent and have a duty to in terms of the FSR Act on a hope presented by respondents. In terms of section 68 of the Banks Act or 166 of FSR Act applicants have a duty to protect the large body of depositors and whatever is left in the bank and to ensure that depositors extract some value from their deposits before it further dissipates with effluxion of time and cost. The fact that there is a section 360 application underway elsewhere does not resolve the difficulties presented to this Court by the commercial insolvency of the Bank. Nor the continual dissipation of value for the general public, which public has deposits in first respondent that far exceeds the value respondents, as group of depositors,

[12] Boschpoort Ondernemings (Pty) Ltd v Absa Bank Limited (2014) 1 All SA 507 (SCA) para 16 and 17
[13] Ibid para 17.

have as deposits in the bank. This Court, therefore considers its discretion narrow in the circumstances.

86. There was much argument by both Counsels for applicants and respondents as to whether the repealed Section 68 of the Banks Act[14] or 166 of the FSR Act is applicable in consideration of the appropriate order. Counsel for respondents contended that Section 68 of the Banks Act has now been repealed and that if applicants wanted to rely on section 166 of the FSR Act, this court must consider that first respondent has not been put in resolution. A condition they consider precedent to final liquidation.

87. Examination of relevant statutory provisions in this regard is at this point opportune. The Financial Sector Laws Amendment Act 23 of 2021 (FSLAA) repealed Sections 68, 69 and 69A of the Banks Act amongst others, effective 1 June 2023. The winding up of a bank is now effective from the same date regulated by Section 166 H of the FSR Act. Applicants submitted that on the face of it section 9 of the FSLAA does not appear to contemplate any interim provision in respect of an institution which is to be wound up but which was under curatorship at the time of the commencement of the provisions of the FSLAA.

88. The winding up of the banks, effective 1 June 2023 per GN 3202/2023 in terms of Section 166H(1) provides that :

(1) 'Despite any other provision of this Act, the Companies Act or the Insolvency Act – (a) the Reserve Bank may apply to a competent court in terms of the Companies Act for the winding up of a designated institution on the grounds that the institution has been placed in resolution and there are no reasonable prospects that the institution will cease to be in resolution; and

(b) No person other than a person recommended by the reserve bank may be appointed as provisional liquidator or liquidator of a

[14] Banks Act, No. 94 of 1990.

designated institution.

89. Section 1 definition of the term 'resolution' provides that 'resolution' of a designated institution, means the management of the affairs of the designated institution as provided for in Chapter 12A. Resolution action means action in terms of Section 166S. Having regard to South African, European Union; the American jurisdictions and Guidelines for Bank Resolution[15] published by the International Monetary Fund, it is evident that a bank resolution occurs simply when a designated authority takes control of a failed financial institution such as a bank and orderly bring its affairs to order or closure without major disruption to the financial system or causing contagion. Evidently implicit in occurrence of resolution may be liquidation that may lead to closure or other suitable business models dependent on existing circumstances being undertaken, after proper examination of the business. Whatever the case, resolution process seems to give weight to a safe and sound conduct of the financial system. The responsibility to manage resolution process vests in this Country with first applicant.

90. In this Court's opinion the resolution tools available to first respondent whether in terms of The Banks Act or the FSR Act vary and must be applied judiciously according to prevailing set of circumstances, and one tool prescribed does not in and of itself trump the other. In this case after appointment of a curator in terms of section 69, prior to coming into effect of section 166, first applicant as a resolution authority, contemplated in the FSR Act, received a report from the curator appointed in terms of section 69 of the Banks Act, who in terms of sub-section 2D wrote to the registrar, the first applicant, to the effect that in his opinion there is no reasonable probability that continuation of curatorship in terms of this subsection will enable the bank to pay its debts or meet its obligations and become a successful concern. It follows that this report in terms of the scheme of the Banks Act, triggers amongst others the tools available to the first applicant

[15] Hoelscher, D.S, Guidelines for Bank Resolution, International Monetary Fund e-library, 18 September 2022.

section 68 of the Banks Act. That Section 68 was repealed as of 1 June 2023 cannot create a legal vacuum to the detriment of the general public. This would be a legal absurdity which cannot be said to have been the intention of the legislature especially looking at Section 9 of the FSLAA.

91. Section 9(1) of the FSLAA, is headed repeal of sections 68, 69 and 69A of Act 94 and provides 9(1): *' Sections 68, 69 and 69A of the Banks Act, 1990, are hereby repealed.*

(2) Despite amendments of the Banks Act, 1990, contained in subsection 1, an investigation by a commissioner in terms of section 69A of the Banks Act, 1990, that is pending and not concluded immediately before the date on which subsection (1) comes into effect must be continued, concluded and reported on by the commissioner in terms of that section as if it had not been repealed'.

92. This Court recalls that in terms of section 69A (11) a commissioner shall prepare a written report in which it shall be stated whether or not in the opinion of the commissioner –

'(a) it is in the interest of depositors or other creditors of the bank concerned that the bank remains under curatorship;

(b) it is in the interest of depositors or other creditors of the bank concerned that the registrar, in terms of the provisions of section 68(1)(a), applies to a competent court for –

(i) the winding up of the bank concerned; or

(ii)...'

93. It is this Court's view that the legislature could not have intended to provide the first applicant with a trigger in terms of section 68 if we have regard to the letter and scheme of section 9 following a report of a commissioner but not a curator. Thus fail to provide the same trigger following a report of the curator in terms of

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section 69(2D). This Court is of the view that the process started or triggered by section 69 cannot be halted or invalidated simply because the relevant provisions allowing such processes to come to their logical conclusion like winding up envisaged in section 68 are interrupted by the repeal. It is for this reason that this Court finds section 12 of the Interpretation Act[16] applicable.

94. Section 12 of the Interpretation Acton on the effect of the repeal of a law provides that '12(1) Where a law repeals and reenacts with or without modifications, any provision of a former law, references in any other law to the provision so repealed shall, unless the contrary intention appears, be construed as references to the provision so re-enacted.

(2) Where a law repeals any other law, then unless the contrary intention appears, the repeal shall not –

(a)

(b) affect the previous operation of any law so repealed or anything duly done or suffered under the law so repealed; or

(c)

(d)

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, forfeiture or punishment as is in this subsection mentioned.'

95. This Court in the light of the afore-going finds that section 12 of the Interpretation Act applies. The obligation that first applicant has to take action and wind up first respondent does not cease, neither the right it has in terms of the repealed section 68. In any event to the extent that it can be found to have been extinguished by the section 9 repeal, the same power to trigger a winding up application can be found in section 12(1) of the interpretation act. Accordingly, this Court finds that applicants are properly before this Court with a winding up application of first respondent grounded by the statutory triggering mechanisms

[16] Interpretation Act 33 of 1957.

after considering both section 68 of the Banks Act; section 166H of the FSR Act; section 9 of the FSLAA, all looked together with section 12 of the Interpretation Act. This Court also finds that applicants are still entitled to their remedy in terms of section 166H of the FSR Act without having to start, the resolution actions contemplated in or undertaken inter alia in terms of the now repealed provisions of the Banks Act, de novo when this Court has regard to the letter and meaning of section 12 of the Interpretation Act.

Conclusion

96. Applicants have made out a case for the final winding up order of first respondent, and accordingly succeed with the relief they seek in paragraphs 3 and 4 of the notice of motion. This Court thus concludes that it is just and equitable having regard to commercial insolvency of first respondent, and having regard to the evidence placed before it, that this Court exercise its discretion in terms of section 344 of the Companies Act and place first respondent under liquidation or final winding up.

Costs

97. Applicants in the main application abided by the Court's decision and did not oppose the intervention application by the group of depositors.

98. The postponement application by respondents in the main application, the group of depositors, was opposed by applicants in the main winding up application. Applicants in the main application who were respondents in the postponement application are entitled to costs including costs of two Counsel. Costs of liquidation shall be costs in the liquidation.

Order

99. Having heard Counsel, read the documents filed by the parties and having considered the matter, the following order is made an order of Court:

IT IS ORDERED THAT:

1. The first Respondent is hereby placed under final liquidation.

2. Ms Zeenath Kajee is hereby appointed as the liquidator of the first respondent and that the Master of the High Court, Pretoria is directed to appoint Ms. Zeenath Kajee as the First Respondent's liquidator.

3. A copy of this order shall forthwith be –

   3.1. Served on the persons listed and in the manner prescribed in Section 346A of the Companies Act 61 of 1973.

   3.2. Served on the first respondent at its registered address; and

   3.3. Published in the Government Gazette and the Citizen newspaper.

   3.4. The Fifth respondent, the intervening group of depositors, to pay costs of the postponement application which costs include costs of two Counsel.

   3.5. The costs of the liquidation application shall be costs in the liquidation.

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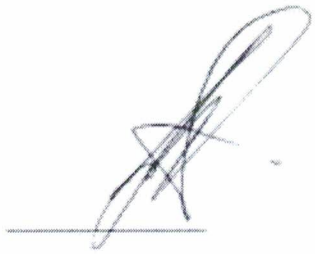

SST KHOLONG
ACTING JUDGE OF THE HIGH COURT
OF SOUTH AFRICA GAUTENG DIVISION,
PRETORIA

Appearances:

For the Applicant:	Adv: Ngwako Maenetje SC
	Adv: Realeboga Tshetlo
Instructed by:	Werksmans Attorneys
For the Respondent:	Adv: Gerry Nel SC
	Adv: Luc Spiller
Instructed by:	Larson Falconer Hassan Parsee Inc.
Date Heard:	24 January 2024
Date Judgement delivered:	26 February 2024