

IN THE HIGH COURT OF LESOTHO

In the Application of .

BURQUIP (PTY) LIMITED

Applicant

v

NORTHERN LESOTHO STEEL AND DIESEL
ENGINEERING(PTY) LIMITED

Respondent

REASONS FOR JUDGMENT

Filed by the Hon. Chief Justice, Mr. Justice T.S.
Cotran on the 25th day of November, 1983

On Friday 11th November 1983 two separate urgent ex-parte applications were put on my desk, one from the applicant Burquip(Edms)Bpk seeking a provisional order of winding up of the respondent company Northern Lesotho Steel and Diesel Engineering(Pty)Ltd in terms of s.173(f) and (g) of the Companies Act 1967 and one application from the respondent company seeking an order that it be placed under judicial management in terms of s. 265 et seq of the Act. There was no alternative but to consolidate the applications and treat the ex-parte application for provisional winding up as if it was opposed. Mr. Molloa, for the respondent had in fact received, a minute or two before he entered my chambers, the papers in connection with the application for provisional winding up. The Court was told by Mr. Buys for the applicant that he had apprised the respondent orally sometime before that an application for provisional winding up was imminent.

It was conceded by Mr. Molloa that the respondent company is unable to pay its debts as its liabilities are in excess of its assets but does not agree that it is otherwise just and equitable that the company should be wound up.

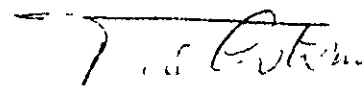
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The major secured creditor (in the sum of M280,000) is the Lesotho National Development Corporation and one of the creditors is the Standard Bank(Ltd) Lesotho but an affidavit filed by a Mr. Nico Smith, who claims to be a director of the respondent with a Mr. Bender, each holding 50 shares of the respondent company, explains the difficulties that the company encountered, and attempts to demonstrate that there are good prospects of the company being salvaged if placed under judicial management when within a few months, it was hoped all the creditors would be paid. Mr. Buys submits that Mr. Nico Smith has no authority to make an affidavit because he is not a director of the company according to the records of the Registrar of Companies who gives the names of S.S. Weyers and S.S. Weyers as directors and shareholders with 3000 and 1000 shares respectively. On this last point there is certainly a discrepancy between the official records and what Mr. Nico avers on the names of directors and the share capital. Even on the assumption that Mr. Nico can explain the discrepancy it seems to me that, on balance, a provisional winding up order should be given as prayed immediately. Incidentally the figure of the assets given by Mr. Nico should in fact be reduced by M80,000 because this amount due to respondent company has been ceded so that the company's liabilities are more than appear on the papers. I will fix the 5th December as the return date. In the meantime the applicant for winding up and the respondent who is seeking judicial management will serve their respective papers on the secured creditors (the LNDC) in case it has got something to say. Leave is also granted to the respondent to file further affidavit. He may give information, if any, such as for example the possibility of getting injections of cash, or bank loans, that may, on the return date, tilt the balance in favour of judicial management. The applicant is also given leave to reply.

Publication of the provisional winding up order to be effected as prayed : once in the Lesotho Weekly and once in the Government gazette.

For Applicant: Mr. Buys
For Respondent &

Applicant for judicial management: Mr. Moiloa


CHIEF JUSTICE

25th November 1983