

SOUTH AFRICA / JUDGMENT

First Rand Bank Ltd and Another v Azrapart (Pty) Ltd and Another (4437/2024) [2025] ZAFSHC 162 (5 June 2025)

[2025] ZAFSHC 162

COURT

Free State High Court, Bloemfontein

BEFORE

Loubser

CASE / FILE NUMBER

4437/2024

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IN

THE HIGH COURT OF SOUTH AFRICA

FREE

STATE DIVISION, BLOEMFONTEIN

Reportable/Not

reportable

Case number:

4437/2024

In

the matter between:

FIRST

RAND BANK LTD

First

Applicant

(Acting

through its Rand Merchant Bank Division)

INVESTEC

BANK LTD

Second

Applicant

And

AZRAPART

(PTY) LTD

First

Respondent

THE

COMPANIES AND INTELLECTUAL PROPERTY

COMMISSION

Second

Respondent

Neutral

Citation: First Rand Bank Ltd and

Another v Azrapart (Pty) Ltd and Another (4437/2024)

[2025] ZAFSHC 162 (5 June 2025)

Coram:

Loubser J

Heard:

9 May 2025

Delivered:

5 June 2025

Summary:

Application to place company in business rescue –
defence of imminent payment of substantial cash injection to the
company

by a foreign entity raised – whether it has now been
shown that the company is no longer in financial distress

ORDER

1

The first respondent is placed under
supervision and business rescue proceedings are commenced in respect
of the first respondent
in terms of s 131 of the Companies Act 71 of
2008, as amended.

2

Piers Michael Marsden and Lance Schapiro
are appointed as the joint interim business rescue practitioners of
the first respondent.

3

The applicants are to give notice of this
order to all known affected persons of the first respondent within
five days of the order
having been granted.

4

The applicants are to serve a copy of this
order on the first respondent at its registered address, and on the
second respondent
by way of email to businessrescue@cipc.co.za.

5

The applicants' costs of this
application on the attorney and own client scale, including the costs
of two counsel where so
employed, shall be costs in the business
rescue of the first respondent.

6

The applicant's costs in the referral
application on the party and party scale, including the costs of two
counsel where so
employed on scale B, shall be costs in the business
rescue of the first respondent.

JUDGMENT

Loubser J

- [1] This is an application for the first respondent to be placed under supervision and that business rescue proceedings be commenced with, in respect of the first respondent in terms of s 131 of the Companies Act 71 of 2008. In terms of s 131(4)(a) of the said Act, the court may make such an order if the court is satisfied that the company is financially distressed or it is otherwise just and equitable to do so for financial reasons, and if there is a reasonable prospect for rescuing the company.
- [2] This court has already delivered judgment in this matter on 27 March 2025. In the judgment, the court pointed out that, on the papers before it, it is common cause between the parties that the total outstanding amount owing by the first respondent to the applicants is R2.3 billion, and that the first respondent is unable to pay it. The court further mentioned that it is the case for the applicants that the first respondent can be successfully rescued, and that the first respondent does not dispute such a prospect. As a result, the court found that there is no doubt strong indications that the first respondent is in financial distress.
- [3] In its judgment, the court then dealt with the main defence raised by the first respondent in the application that it be placed in business rescue. This defence, which it raised right from the beginning on the papers, consists of the following: The first respondent was in the process of finalizing a transaction with a company registered in the United Kingdom. In terms of this transaction, first respondent would receive a capital injection of R2.6 billion from that company, which is known as Redcore Hospitality Holdings Limited (Redcore). In an affidavit filed on behalf of the first respondent, there was an undertaking that the first respondent would make payment of the R2.6 billion so received to the applicants, which would be more than sufficient to cover the liability of the first respondent towards the applicants.
- [4] The prospect of this capital injection became a pivotal issue in the application. This court pointed out in its judgment that different courts of this Division have postponed the proceedings over time to allow the transaction to come to fruition, because it speaks for itself that the first respondent would no longer be in financial distress in relation to the applicants upon receipt of the R2.6 billion from Redcore.
- [5] When the application finally came before this court for hearing on 28 November 2024, it was still not clear whether Redcore would definitely pay the R2.6 billion to the first respondent. The court therefore made certain orders to reach clarity on this question, and reserved final judgment in the application accordingly.

- [6] It also needs mentioning that three days before the hearing on 28 November 2024, the first respondent filed a substantive application for an order directing that oral evidence be heard on a certain dispute between the parties in the application. This application was opposed by the applicants. I do not deem it necessary to repeat the nature of the dispute concerned, for it is fully dealt with in the judgment of 27 March 2025.
- [7] Eventually, the court made the following orders in its judgment of 27 March 2025:
- [1] The First Respondent must file a supplementary affidavit on or before 24 April 2025 informing the Court and the Applicants of the progress made in obtaining the Redcore funds and the payment thereof to the Applicants.
- [2] The Applicants are granted leave to respond to the First Respondent's affidavit, should they wish to do so, by the filing of a responding affidavit on or before 9 May 2025.
- [3] No further extensions of time will be allowed, and the Court will finally decide this application after the 9th of May 2025 on the papers as they then stand.
- [4] The application for a referral to hear oral evidence in respect of the dispute concerning the signature of Mr. Georgiou on the cross-guarantees, is dismissed.
- [5] Final judgment in the main application and in respect of the costs in the referral application is reserved for the period following upon 9 May 2025.'
- [8] On 24 April 2025 the first respondent filed a supplementary affidavit in compliance with the Court order of 27 March 2025. In this affidavit Mr. Georgiou, the sole director of the first respondent, informed that the promised R2.6 billion has not been forthcoming from Redcore as yet. However, he further informed that he has been in constant contact with Redcore to ascertain when the R2.6 billion would be transferred to Peresec in South Africa for payment to the first respondent. In every discussion with a director of Redcore, it was confirmed that the full funding of R2.6 billion was available, and that Redcore was committed to the transaction with the first respondent, Mr. Georgiou stated. He also annexed a letter from Redcore dated 24 April 2025, in which it is mentioned that Redcore has instructed Corpay Inc. to make payment to Peresec a Euro equivalent amount of R2.6 billion out of Redcore's

Cambridge Mercantile Bank account when the entire capital is processed. In the letter it is further confirmed that Redcore has

already commenced and is giving utmost priority to the initial processes required for the transfer of the funds in terms of the

regulations of the South African Reserve Bank and any other regulatory bodies as it may be applicable.

- [9] Mr. Georgiou concluded in his affidavit that he believes that Redcore will ultimately deliver and pay the R2.6 billion. He has been promised by Redcore and the local agent that he will receive written proof and confirmation of the R2.6 billion in Corpay's UK account, but unfortunately, he has not yet received all of this written proof, he says.
- [10] In response to this supplementary affidavit, the applicants filed a responding affidavit on 9 May 2025. In this affidavit, the applicants deny any prospect of the Redcore transaction being finalized and they submit that it is in the interests of not only the applicants, but also other affected persons that the first respondents be placed in business rescue without any further delay.
- [11] The applicants mention that they have been appointed a well-known law firm in the UK to conduct independent investigations in regard to Redcore and to provide discrete advice with respect to publicly available information on Redcore. In particular, the applicants wanted advice regarding the financial statements which Redcore is required to file with the Companies House in the United Kingdom. The applicants annexed an affidavit of the appointed law firm, deposed to by a director of the law firm, to their responding affidavit. This affidavit shows that Redcore has submitted only unaudited financial statements for the years 2021, 2022 and 2023 to the Companies House.
- [12] The UK law firm further established that the 2023 financial statements of Redcore note that Redcore's accounts were exempt from audit pursuant to s 447 of the United Kingdom Companies Act of 2006. In terms of that section, a company qualifies for an exemption from audit if it satisfies two or more of the following requirements: not having a turnover of more than €10.2 million, not having a balance sheet total of more than €5.1 million, and not having more than 50 employees. According to the affidavit, the law firm found that, in fact, Redcore reported no turnover for the applicable period, which is the year 2023, and reported that it had no employees for the period.
- [13] It therefore appears to be clear, on a balance of probabilities, that Redcore will not be able to provide the R2.6 billion injection to the First Respondent soon, or at all. To make matter worse, no affidavits or other documents, including any bank confirmation letters regarding the availability of funds on the part of Redcore, have been submitted by the first respondent in these proceedings. Meanwhile, the first respondent remains financially distressed and out of formal business proceedings. The applicants say that they are severely prejudiced by this situation as, inter alia, the asset forming the very subject of their security (the Fourways Mall) cannot be fully and properly managed and maintained. Having regard to the many extensions of time afforded to the first respondent over a period of some nine months since the launching of the application to obtain the injection from Redcore, I am of the view that the matter now needs to be brought to finality in the interests of justice.
- [14] However, it needs mentioning that on 9 May 2025 the first respondent submitted a further affidavit with the consent of the applicants' attorneys. In this affidavit Mr. Georgiou annexed written confirmation from Redcore's attorneys in Luxembourg that Redcore has access to a

total equity funding facility of €750 million, and that the funding or portions thereof is made available, and flows based on unconditional confirmation of transactions as and when instructed by Redcore Hospitality Holdings Limited. All banking transactions will be effected through the above bank accounts, the attorneys say. The bank referred to is Corpay UK, and the amount of €750 million far exceeds the amount of R2.6 billion, Mr. Georgiou pointed out.

[15] He also annexed a letter from Redcore itself, which is dated 8 May 2025. In this letter Redcore says the following:

‘Please find the confirmation that the funding is in place. The equity funding will be released as per our financial arrangements, and upon receipt of the unconditional and irrevocable confirmation from the existing funders of Azrapart (Pty) Limited of the unconditional release, transfer and entirely unencumbered title of the subject property.’

According to Mr. Georgiou, it is now up to the Applicants to provide such confirmation so that the funds could be transferred.

[16] In a responding affidavit filed on 12 May 2025, the applicants point out that the documents attached by Mr. Georgiou in the first respondent’s further affidavit do not constitute any proof and confirmation that Redcore has access to the amount of R2.6 billion. They point out that the documents now produced are merely a repetition of documents already produced in the first respondent’s answering affidavit in 2024. For instance, annexure AA12 to the answering affidavit consisted of a letter from Corpay which reads as follows:

‘We hereby confirm that Redcore has a facility in place for up to €750 million, of which €150 million has been allocated for a potential transaction between Redcore Hospitality Limited and Azrapart (Pty) Limited (and related entities). Transfer of funds are subject to conclusion of irrevocable and unconditional transaction documents.’

[17] The applicants further point out that it is apparently required that they release (presumably Fourways Mall) from their security prior to the making of the payment by Redcore. In this respect, the applicants say that if Redcore really had the funds, then Redcore could have at least provided a bank guarantee from a reputable financial institution providing for immediate payment against the release of the applicable security. This they had not done, and it shows that they do not have the R6.2 billion available, the applicants say.

[18] It appears then that, having regard to all the information placed before it, this Court still cannot find with any measure of certainty that the R2.6 billion will be transferred to the first respondent by Redcore. It follows that the first respondent should now be placed in business rescue. Such a step will enable the independent rescue practitioners to assess any agreement with Redcore, and if determined viable, to pursue such transactions further in the first respondent’s business rescue proceedings.

[19] The application therefore succeeds, and the following orders are made in terms of the Notice of Motion:

LOUBSER J

Appearances For the Applicant: M Antonie SC, with him A Cooke Instructed by: Edward Nathan Sonnenbergs Inc, c/o Phatshoane Henney Inc., Bloemfontein For the First Respondent: KW Lüdrütz SC, with him D Sive Instructed by: Fluxmans Inc., c/o EG Cooper Majiedt Inc, Bloemfontein

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