**REPUBLIC OF SOUTH AFRICA**

**IN THE HIGH COURT OF SOUTH AFRICA**
**GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case Number: 2026-263191

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

**4 November 2026**

DATE SIGNATURE

In the matter between:

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| **CANADIAN METAL SUPPLY COMPANY LIMITED** | First Applicant |
| **GLOBAL METALS ENTERPRISES (PTY) LTD** | Second Applicant |
| and | |
| **GLOBAL ROOFING SOLUTIONS (PTY) LTD** [In Business Rescue] | First Respondent |
| **WESSEL DE JAGER N.O.** | Second Respondent |
| **ALISON MARY TIMME N.O.** | Third Respondent |
| **WC YOUNGMAN SA (PTY) LTD** | Fourth Respondent |
| **McRIX HOLDINGS (PTY) LTD** | Fifth Respondent |
| **WITKRANS INVESTMENTS (PTY) LTD** | Sixth Respondent |
| **THE TRUSTEES FOR THE TIME BEING OF THE McRIX TRUST (IT2233/2001)** | Seventh Respondent |

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| **THE TRUSTEE FOR THE TIME BEING OF THE WAVERLY TRUST (IT4589/1996)** | Eighth Respondent |
| **CREDIT GUARANTEE INSURANCE CORPORATION OF AFRICA LTD** | Ninth Respondent |
| **ROCKWOOD PRIVATE EQUITY (PTY) LTD** | Tenth Respondent |
| **FROZEN LEMON PROPERTIES (PTY) LTD** | Eleventh Respondent |
| **THE TRUSTEES FOR THE TIME BEING OF THE GRS EMPLOYEE SHARE TRUST** | Twelfth Respondent |
| **THE CREDITORS OF THE FIRST RESPONDENT AND ITS OTHER AFFECTED PERSONS NOT CITED ABOVE** | Thirteenth Respondent |

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**JUDGMENT**

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## INTRODUCTION

[1] The question is not whether the applicants approve of the proposed business-rescue plan. They do not. Nor is it whether the second and third respondents should now be removed as business rescue practitioners. No substantive application for their removal is before the Court. The question is whether the applicants have established grounds to prevent the plan from being put to a vote pending the determination of an application they intend to institute.

[2] The applicants seek to restrain the practitioners from putting the plan published on 16 October 2026, or any amended plan, to a vote. The contemplated proceedings would seek to set aside their appointments under section 130(1)(b) of the Companies Act 71 of 2008, alternatively their removal under section 139(2). The proposed interdict would lapse if those proceedings were not instituted within ten court days. If instituted, however, the restraint would continue until their final determination. The meeting is presently scheduled for 09h00 on 5 November 2026. The second and third respondents are interdicted from putting

to a vote the business rescue plan of the first respondent published on 16 October 2026 ("***the Plan***"), or any amended plan

[3] The distinction between the time allowed to institute proceedings and the duration of the restraint is important. The applicants describe the relief as limited. It is limited by an event, but not by an ascertainable period. Ten court days to commence litigation is not ten court days to conclude it.

[4] Two propositions must be kept separate. A minority creditor is not deprived of statutory protection because its claim is small. Equally, minority status does not confer a right to suspend the statutory voting process merely because the creditor expects to lose the vote. The applicants must establish the requirements for interim relief on the facts of this case.

**THE PARTIES AND THE PROCEEDINGS**

[5] The applicants are recognised creditors of the first respondent, Global Roofing Solutions (Pty) Ltd, which I refer to as GRS or the company. They are affected persons for purposes of Chapter 6 of the Companies Act, Act 71 of 2008 ("the Act"). Their standing is not in dispute. The company's registered office and principal place of business are pleaded to be in Isando, Johannesburg. Both are recognised creditors of the first respondent.

[6] The first respondent is in business rescue. The second and third respondents, Mr de Jager and Ms Timme, are its joint business rescue practitioners. The first three respondents oppose the application. CGIC, the ninth respondent, delivered an explanatory affidavit. It neither supports nor opposes the relief, abides the decision of the Court and seeks no costs. The Youngman parties delivered a confirmatory affidavit by Mr Mills but do not formally oppose the application. The remainder of the respondents, although having been cited, do not participate in these proceedings.

[7] The earlier order postponed this application to 3 November 2026, regulated the exchange of affidavits and heads of argument, and reserved costs. It did not

grant the substantive interdict now sought. The postponement of the vote to 5 November 2026 was by agreement.

[8] Urgency is not in issue. The vote remains imminent. The opposing respondents expressly request a decision on the merits rather than removal of the application from the roll for want of urgency. The application should be entertained urgently.

[9] Notification must nevertheless be distinguished from urgency. The reply identifies service on the individually cited respondents and states that the practitioners circulated notice of the application to all known affected parties on 23 October 2026, with access to the papers.

[10] The applicants seek leave under section 133(1)(b), to the extent necessary. The opposing respondents do not rely on the moratorium to prevent determination of this application. Without deciding whether leave is necessary for every component of the relief, I would grant it insofar as required for this application.

**THE MATERIAL BACKGROUND**

[11] Business rescue commenced on 27 July 2026. On the practitioners' evidence, GRS was already unable to trade effectively. Banking facilities had been withdrawn, major suppliers had stopped supplying stock, leases were under threat, and cash was insufficient to meet salaries and rent. According to the practitioners' the rescue required an urgent realisation process and access to funding, not merely continued trading while a different plan was explored.

[12] It is common cause for present purposes that immediate liquidation would yield no dividend to concurrent creditors. The plan proposes a dividend of three to five cents in the rand to those creditors. It also contemplates retaining 52 jobs. The applicants do not accept that these benefits answer their complaints about the manner in which the plan was constructed concurrent creditors nil in a liquidation.

[13] The practitioners describe an accelerated process which produced eleven formal offers. The principal transaction involves Youngman's acquisition of the company's shares and an advance of R40 318 750 to the company. Other disposals form part of the proposed combination. The practitioners allege that

Youngman's proposal was the only one preserving branches and jobs and providing post-commencement finance during the period required for competition approval. Mr Mills confirms the relevant portions of the answer insofar as they concern the Youngman parties. Youngman buys all the shares in the company from its shareholders and then lends the company R40 318 750. Only Youngman's offer provided for branches to be kept open.

[14] The applicants' case is more than dissatisfaction with the size of their dividend. They allege that the practitioners have favoured those creditors and shareholders whose support is needed to carry the plan. Their complaints concern the perfection of a general notarial bond after commencement, the preservation of selected claims, payment to shareholders, asset values, payments to certain pre-commencement creditors, and the practitioners' remuneration. They contend that these matters, considered together, establish a lack of independence and a conflict of interest.

[15] The applicants hold 6.39% of the voting interests. They identify creditors holding 76.77% whom they say the plan favours. Their apprehension is that those creditors will adopt the plan before independent replacement practitioners can reconsider it. The applicants hold 6.39% of the voting interests. The creditors whom the plan favours hold 76.77%.

**THE APPLICABLE PRINCIPLES**

[16] The requirements for an interim interdict are (a) *prima facie* right, although open to some doubt; (b) a reasonable apprehension of irreparable and imminent harm to that right, (c) a balance of convenience favouring relief and (d) the absence of another satisfactory remedy[1]

[17] Although the Court does not determine the contemplated removal application in advance, it must nevertheless examine the factual foundation for it. Under *Webster v Mitchell*[2], the applicants' allegations are considered together with facts they cannot dispute, the inherent probabilities, and the effect of the respondents'

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1 National Treasury and Others v Opposition to Urban Tolling Alliance and Others 2012 (6) SA 223 (CC), paragraph 41

2 1948 (1) SA 1186 (W)

contrary evidence. An intention to litigate is not, without more, a *prima facie* entitlement to the substantive relief contemplated.

[18] The governing removal authority is *Knoop NO and Another v Gupta and Another*[3]. A ground in section 139(2) must ultimately be proved. Even proof of a ground does not make removal automatic. Removal is not ordered lightly. Actual or potential prejudice to the company and those for whose benefit the administration exists is central. The inference of incompetence, want of care or lack of independence must rest on identified conduct and established primary facts, not speculation.

[19] *Knoop* also makes clear that practitioners must exercise independent judgment. They may not allow the directors, shareholders or any other person to dictate their decisions. That requirement is not answered merely by showing that a majority creditor supports the plan. Conversely, a commercial decision favourable to a major creditor does not, without examination of its circumstances and rationale, prove that the practitioner acted under that creditor's control.

[20] The applicants also invoke principles concerning the proper exercise of majority powers and the removal of fiduciaries. Those principles explain why majority support cannot legitimise a breach of duty. They do not dispense with the particular statutory enquiry under sections 130 and 139. *Knoop* itself draws assistance from legal principles concerning fiduciary obligations or duties while requiring a fact-specific assessment of the practitioner's conduct and the consequences of removal.

[21] The Act gives each creditor rights of notice, participation and proposals under section 145. Sections 150 and 152 require preparation of a plan after consultation and provide for its consideration, amendment and adoption. Under section 152(2), preliminary approval requires more than 75% of the voting interests voted, including at least 50% of the independent creditors' voting interests voted. These are cumulative requirements. Under section 152(4), an

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[3] 2021 (3) SA 88 (SCA), paragraphs 17–24

adopted plan binds dissenting and absent creditors as well as those supporting it.

[22] Section 130 imposes a pre-adoption limit on the application contemplated there. Section 139 does not impose the same limit. It follows that adoption changes the applicants' remedial position. It does not follow that every threatened section 130 application entitles its proponent to stop a vote. In *NTC Global Trade Fund and Another v Letopa*[4], the significance of the limit was explained by reference to the new rights and obligations created by adoption. *NTC Global* did not establish an automatic right to a pre-adoption restraint.

[23] A better return than liquidation is relevant to the statutory conception of rescue and to the consequences of the proposed interdict. It is not a complete answer to unlawfulness. Similarly, the inability of a minority creditor to defeat a plan by voting is not evidence that its statutory rights are illusory. The scheme deliberately combines individual protections with collective decision making.

**THE REMUNERATION COMPLAINT**

[24] The remuneration complaint requires separate consideration. Section 143(1) permits tariff remuneration. Section 143(2) permits a proposal for further remuneration calculated by reference to the specified contingencies. Under section 143(3), the agreement requires the prescribed approvals of creditors and shareholders. Under section 143(4), a creditor or shareholder who voted against the proposal may apply within ten business days to set it aside because it is not just and equitable or because the remuneration is unreasonable having regard to the company's financial circumstances. The existence of that statutory mechanism matters but does not immunise the manner in which approval is sought. The remuneration provided for in the agreement is unreasonable having regard to the financial circumstances of the company.

[25] The practitioners explain that approximately R2.5 million has been paid to them. The R11.5 million provision is an estimate comprising accrued and future practitioner and adviser fees and a proposed uplift capped at R5 million. The

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4 2026 (1) SA 598 (GJ), paragraph 41

additional R4.75 million legal cost provision is explained by reference to transaction documentation and competition filings. Accordingly, it would be incorrect to treat the entire R11.5 million as an additional future payment to the practitioners themselves, with the uplift necessarily added to it again. The explanation does not establish that every proposed charge is reasonable. It does answer that particular arithmetic premise. The uplift will be charged only if the remuneration agreement is approved. The legal fees of R4.75 million cover the transaction documents for each of the four disposals and the filings for competition approval in South Africa and Botswana.

[26] The more substantial point concerns clause 25.2.4. Among the conditions necessary to conclude the proposed transactions, it requires "*the BRP's Remuneration Agreement to have been agreed pursuant to a meeting as required by section 143 of the Act*". Clause 25.1 refers to fulfilment or waiver by the relevant parties. Clause 35.5 also refers to fulfilment or waiver by the practitioners of the relevant suspensive conditions. The BRP's Remuneration Agreement to have been agreed pursuant to a meeting as required by section 143 of the Act. The BRPs will, in addition to their statutory duties, remain in control of the Company until the relevant suspensive conditions in respect of the Proposed Transactions have been fulfilled (or waived by the BRPs).

[27] The answering affidavit alleges that the condition requires only presentation of the agreement at a meeting. That explanation does not readily accord with the words "*to have been agreed*". Presentation and approval are different events. The applicants' concern cannot be rejected on the footing that they have simply misread the clause.

[28] There is also a difference between proposing additional remuneration, which the Act permits, and placing creditors in a position where rejection of additional remuneration may defeat an otherwise viable rescue. Whether the latter consequence is intended, justified or capable of being avoided requires proper attention. The practitioners' statement that their remuneration is disclosed and subject to approval is not a complete answer to that question.

[29] However, in argument, counsel for the practitioners, advised the court that the practitioners have undertaken to waive the condition that the plan is conditional upon the approval as aforesaid, that they will move for the necessary amendment of the plan and intends to call a separate section 143 meeting.

[30] It is unnecessary to decide finally whether clause 25.2.4 establishes a disqualifying conflict. For purposes of the remaining enquiry, I assume in the applicants' favour that it provides a sufficiently arguable foundation for substantive relief to satisfy the *prima facie* right requirement. This is not a finding that the practitioners must be removed. It ensures that the application is not refused by imposing the final removal standard at an interim stage.

**THE OTHER COMPLAINTS**

[31] The practitioners admit consenting to perfection of the general notarial bond on 28 July 2026. The applicants correctly distinguish an existing contractual right to seek perfection from perfected security over movables. The fact that the bond predated rescue does not, by itself, answer the consequences of perfection after commencement.

[32] The answer is, however, more extensive. Perfection proceedings had already been launched. The practitioners allege that consent avoided further litigation and formed part of arrangements enabling access to debtor collections and continued operations. CGIC confirms that it permitted substantial proceeds of its book-debt security to be used for the rescue. The applicants dispute the commercial adequacy and timing of the consideration for consent. Those disputes must be examined if the substantive proceedings are brought. They do not justify treating consent to perfection as inherently unlawful. Section 133(1)(a) expressly contemplates written consent to proceedings. Nor is the validity of the perfection order itself relief sought in this application. The BRPs consented in exchange for access to the residual debtor collections after Absa had been settled. CGIC consented to the BRPs collecting the debtors and using the receipts, some R17 million, to pay salaries and wages, security, IT and the other costs of keeping the business alive

[33] The applicants' latest reply materially narrows the complaint about CGIC's claim. They accept its explanation of how the R69 715 313 claim arose from the claims of insured suppliers. Their remaining complaint concerns, among other things, whether the Safal-derived claim is secured by the particular instruments. It would therefore be wrong to continue treating the original suggestion of an unexplained additional R69 million as unanswered. The applicants accept that CGIC's claim of R69 715 313 is made up of the claims of the suppliers it paid

[34] The existence of a debt, the security attaching to it and its voting interest are distinct questions. The applicants themselves now state that their complaint is not about the size of CGIC's voting interest, but the favourable treatment of creditors whose support can carry the plan. I do not determine the residual Safal-security dispute in proceedings which seek no such determination. The applicants' complaint is not about the size of CGIC's voting interest.

[35] Preservation of selected claims and payment for shares also warrant scrutiny. But preservation of a debt at face value is not the same thing as payment of its face value from the distributable fund. On the respondents' account, the preserved claims remain liabilities of the company which Youngman will own. Nor is a purchaser's payment to shareholders for their shares necessarily a disposition of company property. The applicants' contrary conclusion requires an examination of the funding, transaction terms and alleged diversion of value. The fact of different treatment alone does not prove the diversion or the practitioners' lack of independence. It is not paid from the proceeds available for distribution

[36] The recent judgement *Salungano Group Ltd v Mashwayi Projects (Pty) Ltd and Others; Ndalamo Coal (Pty) Ltd v Mashwayi Projects (Pty) Ltd and Others*[5] concerns the exclusion of post-commencement creditors from voting on a rescue plan. Its recognition that a financier may protect its interests through funding conditions does not decide whether every preserved pre-commencement claim, or every differential treatment, is permissible. Neither side's broader proposition should be accepted without examining the transaction actually proposed. No

[5] [2026] ZACC 38 (7 October 2026)

disputed entitlement of a post-commencement creditor to vote needs determination here.

[37] The Durban valuation discrepancy is another concrete matter. The applicants identify a valuation exceeding the sale price, including a forced sale figure above that price. The respondents invoke the circumstances of an in situ sale, eviction pressure and realisation costs. Neither book value nor a valuation is necessarily an achievable net sale price. Equally, secured creditor consent is not a substitute for the practitioners' proper exercise of judgment. I make no final finding that the sale price was appropriate or that it demonstrates misconduct. Its relevance must be assessed with the other evidence, rather than treated as conclusive in either direction.

[38] The same caution applies to payments said to have been made to essential suppliers and the complaint about arbitration. A decline in ledger balances, particularly after the insurance explanation has been accepted, does not itself prove unlawful payment. Any particular payment relied on must be identified and assessed. As to arbitration, the practitioners expressly deny that the provision excludes the Court's statutory jurisdiction under sections 130 and 139. The present application has itself been entertained. No final determination of the arbitration clause's scope is necessary. The clause does not oust the court's jurisdiction under s130 and 139

[39] Considered cumulatively, these matters justify questions and may justify substantive proceedings. They do not make the applicants' predictions about what replacement practitioners would achieve established facts. Even on the assumption in paragraph [30] above, the remaining requirements for the restraint sought must still be satisfied.

**HARM AND THE BALANCE OF CONVENIENCE**

[40] The applicants' apprehension cannot be dismissed merely because the plan offers them something rather than nothing. Their concern is that adoption will bind them and leave any replacement practitioner with an existing plan to implement. Section 152(4) gives substance to that concern. The pre-adoption

limit in section 130 also means that removal after adoption is not identical to relief before adoption.

[41] I therefore do not accept the respondents' broad submission that adoption has no bearing on the contemplated proceedings. Competition approval may postpone implementation, but it does not postpone all the legal consequences of adoption. Nor would eventual removal necessarily undo an adopted plan. These considerations weigh in the applicants' favour.

[42] They must, however, be weighed against the probable consequences of the particular restraint sought. The applicants propose that the company should continue trading while the vote is suspended. They identify no committed funding for the period until final determination of their contemplated proceedings. They do not offer to provide it. That omission is not a bar to questioning misconduct. It is nevertheless material to an order whose operation depends on the company surviving during the suspension.

[43] The practitioners' evidence is that the available liquidity has depended on the release of secured proceeds, that further finance is linked to adoption of the plan, and that an indefinite postponement places the Youngman transaction at risk. Mr Mills confirms the material evidence concerning Youngman. CGIC independently states that it has not agreed to the use of further proceeds of its security to finance proceedings for an indefinite period pending litigation. Its consent cannot be assumed.

[44] There are limits to that evidence. The papers do not establish a precise cash-exhaustion date or an irrevocable purchaser-withdrawal deadline. I do not find that any postponement, however short, must inevitably cause immediate liquidation. The parties' agreement to postpone the vote to 5 November 2026 demonstrates that a defined postponement has been accommodated. It does not establish that an open-ended suspension can be funded.

[45] The distinction is decisive. The proposed ten-day institution requirement supplies no hearing date, no expedited affidavit timetable and no outside date for final determination. The applicants' statement that they intend to proceed semi-urgently does not supply those safeguards. Nor does the existing period required

for competition approval answer the funding problem. The respondents' evidence links that funding to adoption, not merely to eventual implementation.

[46] The Court is accordingly faced with a real risk that the interdict would jeopardise the transaction and funding on which the rescue presently depends. The consequences extend beyond the practitioners' continued tenure. They include the proposed concurrent dividend and the employment which the plan seeks to preserve. Those interests cannot be treated as incidental to a dispute between the applicants and the practitioners.

[47] A challenge to misconduct does not require a creditor to purchase the company, devise a competing rescue or finance litigation induced trading in every case. But where the relief sought would halt the existing rescue process, the Court must ask how the company will remain viable during that halt. The applicants' case does not provide a satisfactory answer. The possibility that replacement practitioners may obtain better terms is not committed interim finance.

[48] The remuneration issue is specific and capable of being addressed specifically. It may be raised through a proposed amendment, a properly framed application concerning the condition, or the statutory challenge to an additional-remuneration agreement if approved. Section 143(4) does not answer every aspect of the present complaint, and it would not by itself decide a removal application. Its availability nevertheless matters when the relief sought is a prohibition on voting upon this plan and every amended plan until final determination of a separate case.

[49] The applicants may also pursue section 139 relief after adoption. If an adoption or provision is unlawful, majority support does not place it beyond judicial scrutiny. That is illustrated by *Nedbank Ltd v Barrs Pharmaceuticals (Pty) Ltd (in Business Rescue) and Others*[6], where material voting irregularities and contraventions of mandatory provisions justified intervention. That is not a general appeal against the commercial merits of an adopted plan, and I do not

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6 2026 JDR 2063 (WCC), paragraphs 92–115

treat it as one. It demonstrates why refusal of this interdict does not amount to a declaration that every aspect of the plan is lawful.

[50] The alternatives are not exact substitutes for preventing adoption. That limitation has been weighed. But the applicants must show why their protection requires the breadth and duration of the order they seek. Even assuming a prima facie case concerning remuneration and recognising the change in their position upon adoption, the balance does not favour stopping the voting process for an unfunded and indeterminate period.

[51] A short holding arrangement is materially different. Such relief might be appropriate where a decisive issue requires clarification, affected parties have been heard and continued funding is demonstrated. The present papers do not establish the terms or financial basis of such an arrangement. It would be inappropriate to impose one simply to enable the applicants to reconstruct their case. Equally, the Court cannot rewrite clause 25.2.4 or supply an undertaking which the practitioners have not given.

[52] My conclusion is therefore confined. The applicants have not established their entitlement to the pending-removal interdict sought. It is unnecessary to determine the final merits of the allegations against the practitioners. Nothing in this judgment decides CGIC's residual security dispute, finally approves the proposed remuneration, or insulates an unlawful provision or adoption from a properly constituted challenge.

## COSTS

[53] The opposing respondents have substantially succeeded. The applicants raised an issue requiring genuine attention in relation to remuneration, but that does not justify departing from the ordinary consequence of their failure to establish the relief sought. The application required consideration of substantial commercial material, competing statutory remedies and the consequences for a distressed company. Employment of two counsel was reasonable. The complexity and importance of the issues justify counsel's fees on scale C in respect of senior counsel and scale B in respect of junior counsel.

[54] There is no basis for the personal costs order sought against the practitioners. Opposition to proceedings threatening their tenure does not by itself establish that they acted for an improper personal purpose. I have not made findings of bad faith or misconduct warranting such an order. CGIC seeks no costs, and no costs order should be made in its favour or against it.

[55] The reserved costs of the earlier postponement form part of these proceedings. They should be disposed of with the costs of this application rather than left contingent on litigation which has not yet been instituted. The costs order will be on the party and party basis, not a punitive attorney and client basis.

**Order**

[56] I make the following order:

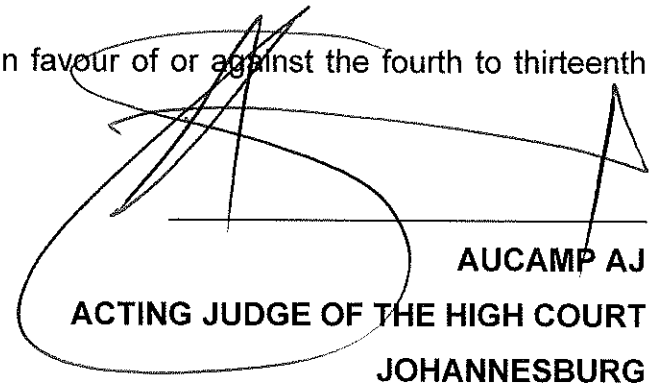
56.1 The application is entertained as one of urgency under Uniform Rule 6(12). Non-compliance with the ordinary forms and time periods is condoned to the extent necessary for its determination.

56.2 To the extent required, the applicants are granted leave under section 133(1)(b) of the Companies Act 71 of 2008 to institute and prosecute this application. No determination is made concerning leave for proceedings not yet instituted.

56.3 The application for an interim interdict restraining the second and third respondents from putting the first respondent's business rescue plan, or any amended plan, to a vote pending final determination of the contemplated proceedings under section 130(1)(b), alternatively section 139(2), is dismissed.

56.4 The applicants shall pay the first to third respondents' costs of this application, including the costs reserved in the earlier order postponing this application to 3 November 2026, jointly and severally, the one paying the other to be absolved. Those costs include the costs of two counsel, with senior counsel's fees taxable on scale C and junior counsel's fees taxable on scale B.

56.5 No costs order is made in favour of or against the fourth to thirteenth respondents.



**AUCAMP AJ**

**ACTING JUDGE OF THE HIGH COURT**

**JOHANNESBURG**

***DELIVERED:*** *This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail and publication on CaseLines. The date and time for hand-down is deemed to be 10h00 on* ***4 November 2026***

Heard On: 3 November 2026
Date of Judgement: 4 November 2026

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| For the Applicants: | Adv W Strobl instructed by Botoulas Krause & Da Silva Inc |
| For the Respondents: | Adv BJ Manca SC and DM Robertson instructed by Webber Wentzel Attorneys |