



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 31 March 2025

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Resilient Rock (Pty) Ltd v Voltex (Pty) Ltd t/a Atlas Group (1132/2023) [2025] ZASCA 33 (31 March 2025)

Today the Supreme Court of Appeal (SCA) handed down judgment, wherein the appeal succeeded with costs, including the costs of senior counsel, against an order of the Gauteng Division of the High Court, Johannesburg (the full court).

This matter concerned Voltex (Pty) Ltd t/a Atlas Group (Voltex), the respondent, who brought an application for liquidation of the appellant, Resilient Rock (Pty) Ltd (Resilient) on the grounds that Resilient was unable to pay its debts. The high court dismissed Voltex's application as it found Voltex failed to prove that Resilient was commercially insolvent. Voltex then petitioned this Court which granted leave to appeal to the full court.

On 17 January 2023, another Resilient creditor, Trencon Construction (Pty) Ltd (Trencon), applied to the high court for an order winding-up Resilient, which handed down judgment on 9 May 2023 provisionally winding-up Resilient and issuing a rule nisi for return on 13 June 2023. On 31 May 2023, at the hearing of Voltex's application, and at the request of Resilient supported by Voltex, the appeal was postponed due to the high court having provisionally wound-up Resilient in *Trencon*. On 8 June 2023, however, the full court granted an order finally winding-up Resilient which led to the Trencon application being removed from the roll. Resilient argued that the full court lacked jurisdiction to issue a final winding-up order as it was barred in terms of s 347(5) of the Companies Act 61 of 1973.

The full court rejected the argument that a court is prohibited by s 347(5) from issuing a winding-up order against a company, if it is already in the process of being wound-up. It concluded that as an appellate court it was entitled to issue an order which would have retrospective effect. As a result, it held that the prohibition did not apply to it.

This Court found that the full court's reasoning to reject the prohibition in s 347(5) was misplaced. The Court found that the full court disregarded the plain meaning of the words in s 347(5) in arriving at this conclusion. Furthermore, this Court held, among other things, that the court was obligated by the legislature to take the new fact of the existence of the order in

Trencon into account; that it was required to take into consideration the order in *Trencon* as that order was relevant to the issue before it; and a court is enjoined to enquire into the practical effect of the order it is asked to make. In other words, to inquire if the matter is moot or not.

The SCA held that the full court was required to give effect to the legislative intent by either postponing the appeal sought by both Resilient and Voltex, or by striking it off from the roll on the ground that it was moot. The Court concluded that s 347(5) disbarred the full court from issuing a second winding-up order.

As a result, the SCA upheld the appeal with costs, including costs of senior counsel where employed, and set aside the full court's order dismissing the appeal with costs.

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