REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 020214-2023

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

Date: 29 August 2025 E van der Schyff

In the matter between:

ELIZABETH WILANDA PRINSLOO N.O.	First Applicant
MAHIER MOHAMEND TAYOB N.O.	Second Applicant
CORNELIA CAROLINA MIENIE N.O.	Third Applicant
LUCAS MBENGENI MUNDALAMO N.O.	Fourth Applicant
ADRIAAN WILLEM VAN ROOYEN N.O.	Fifth Applicant
HLAMALANE JERRY MUSI N.O.	Sixth Applicant

and

THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE	First Respondent
THE MASTER OF THE HIGH COURT, PRETORIA	Second Respondent

JUDGMENT

Van der Schyff J

Introduction

[1] This is an application for declaratory relief under section 21(1)(c) of the Superior Courts Act 10 of 2013. The applicants seek an order for this Court to enquire into and determine disputed rights of and obligations between the applicants and the respondents concerning the interpretation of an order of this court handed down by Baqwa J, on 2 December 2019 ('the order' or the 'Baqwa-order'), and consequential relief. The consequential relief comprises the review and setting aside of income tax assessments for the years 2013 - 2018, issued by SARS on 12 November 2021, 15 November 2021, and 19 November 2021, respectively, pertaining to QSG Consult International (Pty) Ltd and Johan A Smit and Associates (Pty) Ltd.

[2] As I will presently deal with, the order declared three separate companies 'a single entity as contemplated by section 20(9) of the Companies Act'. These would forthwith be known as the QSG Investment Scheme (the Scheme) and were to be administered as a single company, in respect of which the winding-up had to be pursued.

[3] The applicants contend for an interpretation of the order having the effect of stripping the three erstwhile companies of their legal personality. As a result, so the argument went, no liabilities or obligations, including obligations arising from taxation, could be attributed to any of the three subject companies. SARS, in turn, assessed two of the companies and proved claims, based on the individual assessments, against the Scheme. These assessments are the subject matter of the review relief sought in prayer two of the notice of motion.

[4] As a result of the opposing views held by the parties on the interpretation of the order, the applicants informed SARS on 7 March 2022 of their intention to seek a declaratory order in the appropriate forum, and that sections 91, 95, 100 and 104 of the Tax Administration Act 28 of 2011 ('the Act', or the 'TAA') forms the basis of the declaratory order. Deliberations between the parties continued. On 18 March 2022, the applicants made a tender in terms of section 95(3) of the TAA. Meetings of creditors proceeded. These meetings are a point of contention, as it is averred that the meeting of 24 March 2022 took place without SARS having been given notice and without SARS's claims having been presented.

[5] The applicants issued two notices in terms of section 11 of the TAA, the second of which was dated 13 January 2023. A special meeting of creditors was postponed to 28 February 2023 to allow the applicants to bring an application in terms of the second section 11 notice. SARS received a third notice in terms of section 11 on 13 February 2023, informing SARS that the applicants would seek the relief they requested in this application. SARS, however, proceeded to prove its claim against QSG Investment Scheme on 28 February 2023, in the absence of the applicants. The application now before this Court was issued on the same day. The applicants subsequently issued a review application, under a different case number, to set aside the Master's decision to proceed with a meeting on 28 February 2023 and to prove the SARS claims that had arisen from the assessment of the individual companies.

[6] SARS views this application as an attempt to have income tax assessments, which have not been set aside in respect of taxpayers who are not parties before the court, set aside by means of a declaratory order.

[7] SARS raised two points *in limine*: firstly, that this Court lacks jurisdiction to adjudicate this matter; and secondly, that the applicants have no *locus standi*. For a better understanding of the issues, it is necessary to contextualize the issues within the factual matrix of this matter. I accordingly directed the parties to argue their respective cases. I indicated that I would still consider the points *in limine* first and, depending on the outcome thereof, further deal with the application.

Factual matrix

[8] It is common cause that a Ponzi scheme was perpetrated by the father-and-son, duo Johan and Riaan Smit ('the Smits'). Two companies were created, namely Johan A Smit and Associates (Pty) Ltd ('JASA') and QSG-Consult International (Pty) Ltd ('QSG-I'). These entities, herein collectively referred to as the taxpayers, ran a pseudo-investment scheme in which investors were promised high rates of return on their 'investments'. They began accepting deposits and making payments to investors in 2015.

[9] The details of the scheme ran by the Smits are set out in two reports compiled by Bertelsman J (retired), appointed by the Master after the taxpayers were wound up. The reports explain how the Smits used a set of companies to conduct their fraudulent scheme:

a. JASA was the first company created. Both Smits were directors of JASA.
b. JASA controlled QSG-I.
c. These two companies held South African bank accounts into which vast amounts of money were deposited.
d. The invested funds were transferred to another company controlled by the Smits, QSG Consult (Middle East) Ltd, in Dubai.
e. These funds were returned to another company controlled by the Smits, Rialis Consultants (Pty) Ltd ('Rialis'), from where the funds would be distributed to participants.
f. The Dubai company conducted no investment or other commercial transactions. It merely retained the funds, and some of these were transferred back in lump sums by Mr Smit and his son as and when investors had to receive their payments.
g. JASA, QSG-I, and Rialis had the same registered business address.

[10] The South African Reserve Bank ('the SARB') established that an aggregate of R126, 000, 000 had been transferred to Dubai from South Africa between February

2017 and June 2017. The SARB also found that approximately R33,000,000 was transferred back to South Africa.

[11] Consequently, a criminal investigation ensued. The Smits fled the country, and in December 2017, the National Director of Public Prosecution obtained a preservation order against funds in bank accounts held by Rialis and QSG-I.

[12] QSG-I was placed in provisional liquidation in September 2018. A final order was made on 14 May 2019. The first two applicants were appointed as joint liquidators of the insolvent estate of QSG-I. JASA and Rialis were subsequently wound up. The third and fourth applicants were appointed as the joint liquidators on the insolvent estate of JASA. The fifth and sixth applicants were appointed as joint liquidators of the insolvent estate of Rialis.

[13] The winding-up of JASA and Rialis was consequent on the Bertelsman J report, wherein Bertelsman J explained that QSG-I, QSG Consult International (Middle East) Ltd, and JASA were treated as one operation, and recommended, among others, that:

> "In order to do justice to the creditors of all the companies involved, it is therefore necessary to lift the corporate veil, to consolidate the liquidation of all the entities, and to treat the available funds as owing and due to the creditors of all the companies. The liquidators should therefore apply for the liquidation of the companies that have not yet had the hand of the law upon them. At the same time application should be made for an order, either at common law or in terms of section 20(9) of Act 71 of 2008, to consolidate the liquidation process as one and to pool whatever funds or other assets may be found for the benefit of creditors in one liquidation process."

[14] In November 2019, the liquidators of the respective legal entities launched an application in terms of section 20(9) of the Companies Act 71 of 2008 ('the Companies Act'), on the basis that the companies had been used in such a manner as to constitute an unconscionable abuse of their respective juristic personalities. SARS was not cited as a party in this application, although the application was served on it.

[15] The concept of a single entity referred to as the 'QSG Investment Scheme' originates from the order. The terms of the order are set out below. JASA and Rialis were finally wound up on 28 January 2020, after the order underpinning this application was obtained.

[16] Before liquidation, JASA and QSG-I failed to file any income tax or provisional income tax returns and made no income tax payments to SARS. After liquidation, likewise, no tax returns were filed. Nothing came of discussions between SARS and the liquidators relating to the entities' tax liabilities. SARS initiated an audit into the taxpayers' affairs on 20 October 2020. On 24 August 2021, SARS issued letters of audit findings to the respective liquidators of the taxpayers. Income tax assessments were issued in respect of JASA and QSG-I, respectively.

[17] Notices of objection were filed, but SARS dismissed the objections. SARS's reason for declaring the objections invalid was based on section 95(5) of the TAA, and the requirement that a taxpayer may only lodge an objection to an estimated assessment if it had submitted returns for the relevant tax period.

[18] The Scheme's liquidators wrote to SARS stating that they 'cannot be held to account' for the fact that the original taxpayers failed to keep records, and that their 'involvement was *ex post facto.*' On 28 February 2023, SARS proved its claims against the QSG Investment Scheme. The applicants launched this application on the same day.

[19] The interpretation and implication of the order lie at the heart of this application. As the application before Baqwa J was unopposed, no reasons were given for the order.

The Baqwa Order

[20] The application before Baqwa J was brought by way of urgency. Having condoned non-compliance with the Uniform Rules of court concerning forms, service, and time periods, it was further ordered:

"2. That the fifth to seventh respondents (*"the Subject Companies"*) [JASA, QSG-I and Rialis] are declared a single entity as contemplated by section 20(9) of the Companies Act, 71 of 2008.

3. That the Subject Companies, pursuant to the order granted in terms of paragraph 2 above, shall henceforth be known as the "QSG Investment Scheme" and shall in future be administered, in all respects, as one single company under the Companies Act, 71 of 2008.

4. That the third and fourth respondents [the Master of the High Court, Pretoria, and The Companies and Intellectual Property Commission] are ordered to amend their records to accordingly reflect the consolidation of the Subject Companies in terms of section 20(9) of the Companies Act, 71 of 2009.

5. That the third respondent is ordered to, within 5 days of this order, urgently appoint the applicants as liquidators in respect of the QSG Investment Scheme, to further pursue the winding up of the QSG Investment Scheme.

6. That the costs of [the] application form part of the costs in the administration of the QSG Investment Scheme, save in the event that this application is opposed, in which event a punitive costs order, on the scale as between attorney and client, will be sought against such opposing party.'

Developments in relation to the subject companies and the Scheme subsequent to the order

[21] In terms of the order, the Master was required to appoint liquidators for the Scheme. The Master appointed the applicants as provisional liquidators of the Scheme on 6 December 2019. The Master reduced the bond of security issued to the first two applicants in relation to the administration of QSG-I to RNil on 21 December 2020. The applicants submit that this is indicative that their appointments as liquidators of the 'collapsed companies' ended.

[22] Neither party in argument addressed the relevance of the document issued by the Master in terms of which the security bond issued in relation to QSG-I was reduced to RNil. I am of the view, however, that it is necessary to reflect that it is only the bond of security issued in relation to QSG-I that was reduced. It is also necessary to take cognisance of the exact wording of the document:

> "The Bond of Security number SAF520358PTA for R100 000.00 entered into by SAFIRE INSURANCE COMPANY LIMITED on the 25/07/19 as sureties for Sirs ELIZABETH WILANDA PRINSLOO & MAHIER MOHAMED TAYOB [in] their capacity as Liquidators may, as from the date of inception, be reduced to RNil in respect of future intromissions of the said Liquidators, without derogation from any liability that there may be on the Principal Debtors, in respect of any act done or omission made to the date of reduction".

[23] Upon a plain reading, the appointment of the liquidators was not withdrawn. It is the bond of security that was reduced. The document issued on 21 December 2020 does not refer to section 385 of the Companies Act 61 of 1973, nor does it state that the liquidators' duties have been fully discharged.

[24] In *Pieters NO v ABSA Bank Ltd*,[1] the Supreme Court of Appeal expressed the view that the issue by the Master of a certificate under section 385 permitting the liquidator to cause the bond of security to be cancelled, in conjunction with the issue of a certificate under section 419(1) that the company had been completely wound up, brought the winding up process to an end and released the liquidator from office. In the current matter, no section 419(1) certificate was issued in conjunction with the letter in which the security was reduced. The reduction of the security does not contain any reference to s 385. It cannot be assumed that the reduction of the security to nil confirms the release of the liquidators. The mere reduction of the bond of security is not indicative that the liquidators were released as liquidators of the three individual entities.

---

[1] 2021 (3) SA 162 (SCA), at para 25.

The declarator sought

[25] In these proceedings, the applicants seek that it be declared that the order Baqwa-order had the following consequences:

a. QSG-I, JASA and RIALIS were from the date of the order deemed not to be juristic persons in respect to any right, obligation or liability of the Companies, including any obligation in respect of a Tax act as defined in section 1 of the Tax Administration Act 28 of 2011;
b. SARS no longer had the power to assess the companies for tax.
c. Any representative of the companies (as there may have been prior to the order) and any office bearer of the companies, such as a director or liquidator, ceased to occupy such position or office when the order was issued and no director, liquidator or representative taxpayer could be appointed for the companies thereafter;
d. The applicants are not representative taxpayers of the companies.

[26] The consequential relief sought is that the income tax assessments for the years 2013 - 2018 issued by SARS on 12 November 2021, 15 November 2021, and 19 November 2021 pertaining to QSG-I and JASA be reviewed and set aside.

Points in limine

[27] SARS raised two points *in limine*: firstly, that the court lacks jurisdiction, and secondly, that the applicants lack *locus standi* because the QSG Investment Scheme is not a taxpayer. It is well established that where a jurisdictional challenge is raised, this must be decided first.[2] For purposes of the first point *in limine*, it is accepted that the applicants have *locus standi*, the aspect will only be decided when the point is discussed.

---

[2] *Trustees of the CC Share Trust and Others v CSARS* (38211/21) handed down on 24 July 2023 by Manoim J. https://www.sars.gov.za/legal-counsel/dispute-resolution-judgments/high-court/hc-2025-2023/ filed at https://www.sars.gov.za/wp-content/uploads/Legal/Judgments/HC/Legal-DRJ-HC-2023-14-Trustees-of-the-CC-Share-Trust-and-Others-v-CSARS-38211-21-2023-ZAGPPHC-597-24-July-2023.pdf accessed on 27 July 2025.

Does the High Court have jurisdiction to hear the matter?

[28] Regarding jurisdiction, the argument is that it is evident from the second prayer of the notice of motion that the applicants seek an order setting aside the income tax assessments raised against the taxpayers.[3] SARS relies on section 105 of the Tax Administration Act, 28 of 2011 ('the TAA'). This section provides as follows:

> 'A taxpayer may only dispute an assessment or 'decision' as described in section 104 in proceedings under this Chapter, unless a High Court directs otherwise'.

[29] SARS submits that the applicants failed to deal with section 105 of the TAA in the notice of motion and the founding affidavit, and consequently failed to make out a case for a direction as required by the section. SARS contends that the applicants are endeavoring, under the auspices of a declaratory order in terms of section 21(1) (c) of the Superior Courts Act, to circumvent s 105 of the TAA.

[30] SARS relies on the judgment recently handed down by the Constitutional Court in *United Manganese of Kalahari (Pty) Limited v Commissioner of the South African Revenue Services and four other cases* ('*United Manganese*').[4] SARS contends that the applicants failed to request a section 105 direction from this court and that this is the end of the matter.

[31] The applicants did not seek a section 105 direction in their notice of motion or in the founding affidavit. In answer to SARS's challenge posed in the answering affidavit, the applicants stated in their replying affidavit that because the judgment in *United Manganese* was handed down after the application was launched, they would, 'in an abundance of caution', seek an amendment to the notice of motion. The applicants submitted that-

> "...this is a most appropriate matter for the High Court to adjudicate, given the fact that it turns on points of law. ... There is no reason why the applicant needs

---

[3] Prayer 2 reads: 'The income tax assessments for the years 2013-2018 issued by the respondent on 12 November 2021, 15 November 2021 and 19 November 2021 pertaining to QSG Consult International (Pty) Ltd., and Johan A Smit and Associates (Pty) Ltd.) are reviewed and set aside.'

[4] [2025] ZACC 22.

> to be put through the effort and costs of a tax court trial if the more expeditious motion court proceedings in the High Court can dispose of the matter, as the applicants contend it should."[5]

[32] The applicants never sought to amend their notice of motion. When argument commenced, counsel for the applicants submitted that a condition application in terms of section 105 of the TAA is brought as it is the applicants' view that this application falls outside the purview of section 105. The applicants' position is that the QSG Investment Scheme ('the Scheme') is not a taxpayer. The Scheme is a new entity created by the order granted by Baqwa J. The applicants go so far as to state in the heads of argument that-

> "[T]he assessments were made in relation to QSG-I and JASA. They are the taxpayers. The taxpayers are not the parties before this court. They do not dispute their assessments."

As a result, the applicants submit that section 105 does not apply and that the first point *in limine* must fail.

Discussion

[33] The chronology filed by the parties, along with the annexures to the respective affidavits, indicates that after SARS issued notices of assessment and delivered them to the liquidators of JASA and QSG-I, as well as the Assistant Master, on 12, 15, and 19 November 2021, respectively. The liquidators of the Scheme objected to the assessments on 24 January 2022. On 14 February 2022, SARS invalidated the objections of the liquidators on the basis of sections 95(5) and 100(1)(a)(i) of the TAA. No appeal was launched thereafter.

[34] In *United Manganese of Kalahari (Pty) Ltd v Commissioner of the South African Revenue Service and four other cases,*[6] the Constitutional Court dealt with the interpretation and application of section 105 of the TAA and the question of whether

---

[5] Paras 73 and 74 of the replying affidavit.

[6] [2025] ZACC 2.

taxpayers are entitled to pursue review or declaratory relief in the High Court, having regard to section 105 of the TAA.

[35] Section 105 applies in matters where a taxpayer disputes an assessment or a decision as contemplated in section 104 of the TAA. The only ways to dispute assessments are to have an assessment set aside on review or to seek a declaratory order on the correctness of the assessment.

[36] The facts of this matter, however, render a peculiar result. It is common cause that assessments were issued for JASA and QSG-I. SARS used these assessments to prove its claim against the Scheme. It is, however, not JASA and QSG-I that seek the review and setting aside of the assessments. It is the Scheme, an entity both parties agree is not a taxpayer in the current factual context.

[37] The liquidators challenge SARS' ability to assess JASA and QSG-I as individual juristic entities. They aver that the effect of the order granted by Baqwa J was to extinguish SARS' ability to assess any of the individual companies. In the founding affidavit, the liquidators claim that they:

> "[D]o not contend that SARS' right to raise assessments arising from the conduct of the three companies was extinguished as a result of the Baqwa order. What was extinguished was SARS' ability to assess any of the three companies by themselves, and in their previous incarnation. SARS became entitled, after the Baqwa order to assess the QSG Scheme, and to hold it responsible for any tax delinquency committed by any of the underlying companies."

[38] It is trite that the TAA introduced, among other things, a uniform regime for objecting to assessments and decisions of the Commissioner for the South African Revenue Services and appealing such assessments and decisions to the Tax Court. It is, however, for taxpayers to object to assessments. The issue as to whether the Scheme would fit the definition of a taxpayer under section 151, and particularly section 151(d) of the TAA, was not canvassed. However, both parties agreed that the Scheme was not a registered taxpayer.

[39] The novel factual matrix of this matter, wherein an entity that is not the taxpayer seeks a declarator that might impact the validity of tax assessments, moves the declarator sought out of the ambit of section 105 of the TAA. Further, the point of law that needs to be addressed in considering whether to grant the declarator sought is one of general importance, such that a judgment with precedential value will have public utility.[7]

Do the applicants have locus standi *in this application?*

[40] Due to the impasse between the applicants and SARS, the applicants have an interest in having the order interpreted for its implications and consequences to be determined. As a result, they have the necessary *locus standi* in this application.

Declaratory relief

[41] The next question is whether this court should grant declaratory relief in terms of section 21(1)(c) of the Superior Courts Act 10 of 2013. A real controversy exists between the parties regarding the implications flowing from the order. The applicants have a direct and substantial interest in having the uncertainty resolved.[8]

Interpreting the Baqwa-order

[42] In interpreting the order, I have regard to the founding papers filed in the application in which the order was sought, the terms of the order read within the context of section 20(9) of the Companies Act, and the purpose for which the order was initially sought and consequently granted. The content of the order is stated above and need not be repeated.

[43] The order that is sought to be interpreted was obtained in an application where SARS was not cited as a respondent. Although the application was served on SARS, SARS was not a party to the proceedings. It is trite that any person or entity who has a direct and substantial interest in the outcome of a matter must be joined as a

---

[7] *United Manganese* at para [122].

[8] *Ex Parte Nell* 1963 (1) SA 754 (A).

respondent, even if no direct relief is claimed against them. As indicated below, the application before Baqwa J was brought to facilitate the unified liquidation of the three subject companies. Where SARS was not cited as a party to the proceedings, the order cannot, *ex post facto*, be interpreted to affect SARS's rights in terms of the TAA.

[44] The applicants' counsel submitted that the order operates '*in rem* and not *in personam*'. This submission does not advance the matter since this court is seized only with interpreting the order, and not with determining whether any party bound by it is contravening it or in contempt. For purposes of interpretation, it is irrelevant that SARS did not appeal the order or failed to apply to be joined to the earlier proceedings. If the applicants were of the view that the order would impact SARS' rights, they ought to, and would, have cited SARS as a party.

[45] The founding affidavit in support of the section 20(9) application, however, reveals that the applicants were of the view that no creditor would be prejudiced or hampered by the order sought. I find it appropriate to repeat the applicants' own words, contained in the founding affidavit before Baqwa J:

> 'As soon as the entire Ponzi scheme has been unraveled and the provisions of section 20(9) of the 2008 Act applied in respect of all the participants to the Ponzi scheme, the frozen money must be recovered and distributed amongst the creditors **who prove claims against the Subject Companies, *qua* creditors of QSGA, Rialis and JASA** but against the said companies as the newly formed QSG Investment Scheme – the conglomerate that the constituent entities always were.' (My emphasis.)

[46] The primary purpose of the application before Baqwa J was to consolidate the liquidation of the subject companies. The applicants explained in the founding affidavit that:

> 'If so, the [liquidators] duly appointed by the Master of the High Court, can then – in relation to all of the Companies concerned and pursuant to one composite winding-up process:
>
> - administer the winding up process in relation to all three companies in one process, which would not only save costs but substantial resources.'

[47] This, the applicants averred, would benefit 'not only one but all the creditors of the Subject Companies.' The fact that SARS was not cited as a party supports a finding that the order must be interpreted so as not to prejudicially affect SARS' rights. This, however, is only one of the aspects creating the context within which the order is interpreted.

[48] Adding to the relevant context is JASA and RIALIS's final winding-up subsequent to the order being granted. If the applicants themselves held the view that the effect of the order was to terminate the juristic personalities of the three subject companies, it would not have been necessary to have the individual entities finally wound up after the Baqwa order was granted.

[49] This brings us to the context of seeking an order in terms of section 20(9) of the Companies Act. The Baqwa order provides that the subject companies are declared a 'single entity as contemplated in section 20(9) of the Companies Act'.

[50] Section 20 of the Companies Act 71 of 2008 is titled 'Validity of company actions.' It falls under Chapter 2 – 'Formation, Administration and Dissolution of Companies' Part B- 'Incorporation and legal status of companies'. Subsection (9) provides as follows:

> "If, on application by an interested person or in any proceedings in which a company is involved, a court finds that the incorporation of the company, any use of the company, or any act by or on behalf of the company, constitutes an unconscionable abuse of the juristic personality of the company as a separate entity, the court may-
>
> (a) declare that the company is deemed not to be a juristic person in respect of any right, obligation or liability of the company or of a shareholder of the company, or any act by or on behalf of the company or, in the case of a non-profit company, a member of the company, or of another person specified in the declaration; and
>
> (b) make any further order the court considers appropriate to give effect to a declaration contemplated in paragraph (a)".

[51] Section 20(9) is a deeming provision.

[52] In *Eastern Cape Parks and Tourism Agency v Medbury (Pty) Ltd,*[9] the Supreme Court of Appeal explained, with reference to 'Bennion *Statutory Interpretation* 3 ed 1997', that deeming provisions 'often deem things to be what they are not. In construing a deeming provision, it is necessary to bear in mind the legislative purpose'.

[53] In *Mouton v Boland Bank*,[10] the court was seized with interpreting section 26(7) of the Close Corporations Act 69 of 1984. Here, the court affirmed the position stated in Bennion *Statutory Interpretation* 3rd ed, section 304, p 736, that –

> 'The intention of a deeming provision, in laying down a hypothesis, is that the hypothesis shall be carried as far as necessary to achieve the legislative purpose, but no further.'

[54] The purpose of section 20(9) of the Companies Act is to provide a statutory basis for piercing the corporate veil,[11] and to empower the court to grant consequential relief. The hypothesis created through the deeming provision should thus be carried only as far as necessary to achieve the purpose of the legislator. There is a huge difference between a company being 'deemed not to be a juristic person' and a company's juristic personality being extinguished or terminated.

[55] As a creature of statute, a juristic person, like a natural person, has a life cycle. Its legal existence is regulated by the Companies Act 71 of 2008. From the date and time that the incorporation of a company is registered, the company is a juristic person that exists continuously until it is deregistered and its name is removed from the Companies Register in accordance with the provisions of the Companies Act.[12] A duly registered company is a distinct legal *persona*, albeit a *persona* by a fiction of law. The fact that a legal *persona* comes into existence through a fiction of law does not imply

---

[9] 2018 (4) SA 206 (SCA), at para [29].

[10] 2001 (3) SA 877 (SCA), at para [13].

[11] *Ex Parte Gore & Others NNO* 2013 (3) 382 (WCC), at para [30].

[12] S 19 of the Companies Act.

that it is a figment of the imagination. The fiction is foundational of South African company law. As a result, a duly registered company is a legal entity in its own right,[13] limited only by the boundaries of its abstract essence.

[56] The common law principle of 'piercing the corporate veil' permits disregarding the separate legal personality of companies in certain instances. Section 20(9) of the Companies Act statutorily broadened the bases upon which courts may grant relief that entails disregarding corporate personality.[14] Binns-Ward J aptly explained in *Gore* that section 20(9)(b) affords the court very wide powers to grant consequential relief.[15] I agree with his view that an order made in terms of section 20(9)(b) –

> '... will always have the effect, however, of fixing the right, obligation or liability in issue of the company somewhere else.'

[57] In the current case, the 'liability' involved is the subject companies' respective tax liabilities toward SARS. The liability is not extinguished. It did not evaporate. It can only be determined with reference to the subject companies. It is, however, fixed somewhere else – in this case, in the Scheme.

[58] Wepener J explained in *Centaur Mining South Africa (Pty) Ltd v Cloete Murray NO and Others,*[16] that where two or more entities in liquidation are collapsed, the separate concursus in each will fall away to become a single concursus in the liquidated entities. Wepener J hinted at a 'myriad of consequences in any case of a collapse'[17] but was not required to elaborate on the issue. What is relevant for purposes of interpreting the Baqwa order, is that the Master in *Centaur Mining* proceeded to deregister the companies instead of reflecting them as having been liquidated. To this, Wepener J responded:

---

[13] *Dadoo Ltd v Krugersdorp Municipal Council* 1920 AD 530.

[14] *Gore,* above n 11, at para [33].

[15] *Gore,* above n 11, at para [34].

[16] 2023 (1) SA 499 (GJ) at para [33].

[17] *Centaur Mining*, above, para [34].

'It does not affect the court order. If the Master erred, appropriate relief should be sought against the Master.'

[59] Wepener J's remark supports the view that the 'collapsing' of companies into a single entity under section 20(9) of the Companies Act does not mean that the individual companies cease to exist or that their juristic personality is terminated.

[60] The applicants submit that SARS did not lose any rights under the Baqwa order, but only lost the administrative power to collect taxes from the three subject companies. They continue, however, to state that the assessments could no longer be issued against the subject entities because they do not have legal personality. According to the applicants, any assessment would have to be directed at the new entity as represented by the liquidators. I disagree. The tax liability of the subject companies arose within each individual company and had to be assessed accordingly. The debts became due in the hands of the subject companies, but are, as a result of the order, payable through the purse of the Scheme. This is so because the subject companies' resources are pooled in the Scheme.

[61] Despite denying it, the applicants essentially contend for an interpretation of the Baqwa order that would lead to the extinction of the tax liability of the subject companies. This contention is untenable. The consequence of the Baqwa order is only that the procedure for collection by way of liquidation shifted to the consolidated entity.

[62] As a result, the declaratory relief sought cannot be granted. The application stands to be dismissed, with costs of two counsel on scale B and C, respectively. No case has been made for punitive costs.

Order

In the result, the following order is granted:

1. The application is dismissed with costs, including costs of two counsel on scale B and C, respectively.

E van der Schyff
Judge of the High Court

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. In the event that there is a discrepancy between the date the judgment is signed and the date it is uploaded to CaseLines, the date the judgment is uploaded to CaseLines is deemed to be the date that the judgment is handed down.

For the applicants:	Adv. PF Louw SC
With:	Adv. R Mastenbroek
Instructed by:	Mothilal Attorneys Inc
For the first respondent:	Adv. L Kilmartin SC
With:	Adv. J Fourie
Instructed by:	KEBD Attorneys
Date of the hearing:	5 June 2025
Date of judgment:	29 August 2025