



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case Number: **20345/2022**

In the matter between:

DARK FIBRE AFRICA (PTY) LTD

Applicant

and

**BLUECENTRIX (PTY) LTD T/A
SMARTSWITCH**

Respondent

Bench: H.C. Schreuder, AJ

Heard: 26 February 2024

Delivered: Monday, 9 April 2024

The date and time for hand-down is deemed to be 14h30 on 9 April 2024.

JUDGMENT

SCHREUDER, AJ:

INTRODUCTION

- [1] The respondent, Bluecentrix (Pty) Ltd t/a Smartswitch (hereinafter referred to as "Bluecentrix") was placed under a provisional order of liquidation in the hands of the Master of this court in terms of a judgment delivered on 27 July 2023 by Gamble, J.
- [2] The application for the winding-up of Bluecentrix is brought in terms of s 344(f) read with sections 345(1)(a) and 345(1)(c) of the Companies Act, 61 of 1973 (as amended) as read with Item 9 of Schedule 5 of the Companies Act, 71 of 2008.

The provisional liquidation stage

- [3] The applicant, Dark Fibre Africa (Pty) Ltd (hereafter referred to as "DFA") alleged that it provided services to Bluecentrix for the period August 2018 to July 2021, for which it rendered invoices. Bluecentrix allegedly fell behind on making payments as a consequence of which the parties engaged in negotiations over a lengthy period to reach a payment arrangement acceptable to DFA. However, on 24 February 2021, Bluecentrix's Mr Mau van der Mescht ("van der Mescht") wrote to DFA in an email on which he copied in, *inter alia*, Bluecentrix's only director Mr Johan Frederick van Rooyen ("Van Rooyen"), stating amongst others that Smartswitch (Bluecentrix's trading name), was not in a financial position

to repay its debt at the rate of R250,000-00 a month and that they will make DFA an offer by 31 March 2021 to settle its debt with a lump sum. During July 2021, DFA caused a notice in terms of s 345(1) of the Companies Act, 61 of 1973 to be served on Bluecentrix, demanding repayment of the outstanding amount of R1,388,434-06. Bluecentrix neglected to pay the amount stated in terms of the s 345 notice or to secure or compound for it to the reasonable satisfaction of DFA, as a consequence of which DFA seeks the final winding up of Bluecentrix based on its deemed inability to pay its debts.

- [4] Gamble, J found at the provisional liquidation inquiry stage that DFA's founding papers made out a *prima facie* case for a provisional winding-up order under s 344(f) by alleging the elements of:- an indebtedness by Bluecentrix in the sum of R1,388,434-06; - an admission by Bluecentrix that it is indebted to DFA; - the failure by Bluecentrix to settle the debt when it was due and payable; and, - an admission by Bluecentrix that it was unable to pay the debt which was due to DFA in the ordinary course of its business.

- [5] Having found that the onus shifted to Bluecentrix to show that the debt upon which DFA relied is *bona fide* disputed on reasonable grounds, as made plain in cases such as Hulse-Reutter¹, Gamble, J considered what

¹ Hulse-Reutter & Another vs HEG Consulting Enterprises (Pty) Ltd (Lane and Fey N.N.O. intervening) 1998 (2) SA 208 (C) at 218 D – 219 C

was revealed by Bluecentrix's answering affidavit. Gamble, J rejected several *in limine* points raised by Bluecentrix, *inter alia*, on the basis that it was not in dispute that the s 345 letter had been sent to the correct entity at the right address. The dispositive effect of the following introductory averment in Bluecentrix's answering affidavit, which precedes the *ad seriatim* response to the founding affidavit, also weighed conclusively with Gamble, J:

"21. I note that notwithstanding the above point in limine, the applicant and Bluecentrix have done business together and there is a dispute between them relating to the amounts purportedly owed to the Applicant."

- [6] This statement in paragraph 21 of Bluecentrix's answering affidavit was interpreted by Gamble, J as an admission by Bluecentrix that it owes DFA a lesser amount than claimed, thus limiting the dispute between the parties to only the extent of that indebtedness and that it is not an issue that such indebtedness exceeds the statutory minimum of R100.00 set in s 345. Accordingly, Gamble, J found that this allegation sounds the death knell for Bluecentrix's attempt to avoid the inevitable conclusion, namely that its case is not about whether it is indebted to DFA or not, but rather the extent of the indebtedness. This being its case, Bluecentrix was deprived of an opportunity to mount some resistance to the attack on its

insolvency based on the Badenhorst rule² as referred to in paragraph 8 of Orestisolve.³

- [7] During argument presented before me at the final liquidation stage, Bluecentrix's counsel insisted that the statement in paragraph 21 of Bluecentrix's answering affidavit does not constitute an admission that any amount is owed by Bluecentrix to DFA, and emphasised the use of the word "purportedly".
- [8] I have considered, *inter alia*: - this argument as well as the question whether Bluecentrix has mounted any resistance to the attack on its insolvency; - whether DFA has violated the Badenhorst rule that winding-up proceedings should not be resorted to as a means of enforcing payment of a debt, the existence of which is *bona fide* disputed on reasonable grounds; and, - in so doing, whether DFA also violated the broader principle that the court's processes should not be abused.
- [9] I have concluded that Bluecentrix has done nothing since the granting of the provisional liquidation order by Gamble, J to show that it is indeed solvent. In addition, Bluecentrix has advanced no evidence upon which I could find that DFA has violated the Badenhorst rule or the broader principle that the court's processes should not be abused. Finally,

² See: Badenhorst vs Northern Construction Enterprises (Pty) Ltd 1956 (2) SA 346 (T) at 347 H – 348 C

³ Orestisolve (Pty) Ltd t/a Essa Investments vs NDFT Investment Holdings (Pty) Ltd & another 2015 (4) SA 449 (WCC)

Bluecentrix has done nothing since being placed under provisional liquidation to show that it *bona fide* disputed the existence of a debt towards DFA.

[10] It was further found by Gamble, J that Bluecentrix: - made bald, generalised denials in its answering affidavit regarding, *inter alia*, the extent of its indebtedness to DFA. The various reasons put up by Bluecentrix for its contention that it is not indebted in the amount alleged including the defence of prescription, were also considered. However, it was found by Gamble, J that the issue of prescription was not adequately addressed to enable the court to assess the veracity or extent of the allegation and, most importantly, Bluecentrix did not take the court into his confidence and did not allege what it says is owed and how the amount ought to be calculated. I have concluded that it is an unfortunate feature of Bluecentrix's approach in this application for its winding-up that since it was placed under provisional liquidation, it perpetuated its pertinacity to refuse to take the court into its confidence regarding what it says is owed to DFA, as well as what was to be made of the exchanges regarding Bluecentrix's indebtedness in the string of emails, right up to the hearing in the final liquidation stage.

[11] The issues surrounding the defence of prescription as well as the question whether Bluecentrix failed to take the court into its confidence have been fully argued before me and accordingly considered at the final liquidation stage, particularly in view of the entire string of emails

attached to the replying affidavit, of which the van der Mescht email of 24 February 2021 is part.

[12] Bluecentrix's application to strike out the entire string of emails and the passages in the replying affidavit referring thereto was dismissed by Gamble, J on the basis that they were a continuation of the narrative commencing in the founding affidavit and constituted a direct response to the purported denials and the case generally put up in the answering affidavit. It was pertinently found that these allegations were not to be struck out as DFA was not introducing new matter, did not attempt to make out a case in reply, and that Bluecentrix would not suffer any prejudice if the matter is not struck out as Bluecentrix spurned the reasonable invitation by DFA to file a fourth set of affidavits, thus preferring rather to press on with the matter on the papers as they stood.

[13] I requested the parties to address me on why I should not have regard to the entire string of emails, seeing that Bluecentrix's application to strike was dismissed by Gamble, J. Bluecentrix's counsel conceded that the string of emails remained part of the evidence before me at final liquidation stage, but urged me not to consider them as they did not form part of the case that DFA made out in its founding papers, an argument which I find surprising and untenable, seeing that it was previously rejected by Gamble, J.

The final liquidation stage

[14] Since 7 August 2023 when the judgment of Gamble, J was handed down, dismissing Bluecentrix's application to strike with costs and placing Bluecentrix under a provisional order of liquidation, in the hands of the Master of this court, the following occurred procedurally before this matter was heard in respect of the final liquidation order sought by DFA:

- (a) On 28 August 2023, Bluecentrix filed a notice of application to appeal the judgment of Gamble, J in respect of the dismissal of its striking application;
- (b) On 29 August 2023, Bluecentrix filed a notice to withdraw its application for leave to appeal;
- (c) On 11 September 2023, Bluecentrix filed a counter application for the delivery of documents referred to in DFA's founding affidavit along with an "AFFIDAVIT OPPOSING RULE NISI" granted by Gamble, J;
- (d) On 13 September 2023 Thulare, J granted an order by agreement between the parties postponing the hearing for the final liquidation to the semi-urgent roll of this court on 26 February 2024 and allowing for the filing of a supplementary affidavit by Bluecentrix by 6 October 2023 and for DFA to file its answering affidavit to Bluecentrix's supplementary affidavit by 3 November 2023;
- (e) Bluecentrix filed a further supplementary affidavit in terms of Rule 6(5)(e), making various allegations against DFA and the

provisional liquidators. Nothing relevant turns on the allegations in this supplementary affidavit insofar as the merits of this matter at the final liquidation stage are concerned;

- (f) On 20 September 2023, provisional liquidators were appointed by the Master of this court;
- (h) On 30 January 2024, the provisional liquidators filed a preliminary report. Bluecentrix opposed the filing of this preliminary report and urged me not to consider it. I did not find it necessary to consider the provisional liquidators' preliminary report for purposes of determining whether the requirements have been met for a final order of winding up of Bluecentrix. Accordingly, I do not decide the admissibility of the provisional liquidators' report.

[15] The rule *nisi* order by Gamble, J called on all persons interested and provided the opportunity for such persons to appear and show cause why Bluecentrix should not be placed under a final order of liquidation.

[16] Apart from arguing that the documents provided to it by DFA under the counter application did not reveal a contractual relationship between Bluecentrix and DFA and that these documents supported its contention that it owed no debt to DFA, Bluecentrix in its "AFFIDAVIT OPPOSING RULE *NISI*" of 8 September 2023 adopted the approach that it "*.....will focus on what I have been advised appeared to be the main issues in this matter, primarily based on Gamble, J's judgment of 7 August 2023 ("the*

Judgment"), which, *I am of the respectful view was wrong*" and merely persisted with the same points argued before Gamble, J that DFA failed to make out a case in its founding papers and that any claims that it may have had against Bluecentrix have become prescribed.

[17] Insofar as the alleged absence of a contractual relationship between DFA and Bluecentrix is concerned, the finding by Gamble, J that these contentions by Bluecentrix were nothing more than "*smoke and mirrors*", namely attempts to evade the simple fact that the parties did business together and that Bluecentrix acknowledges its indebtedness to DFA on multiple occasions, cannot be faulted. An analysis of the string of emails of which the van der Mescht email of 24 February 2021 is part, shows, in my view, that the response of Van Rooyen, Bluecentrix's only director and deponent, is obfuscatory and indubitably dishonest.

[18] It is common cause that DFA issued a s 345 notice to Bluecentrix, based on the Van der Mescht email of 24 February 2021 and that this notice was duly served on the correct address of Bluecentrix.

[19] As noted, Bluecentrix's counsel urged me to not have regard to the string of emails from 18 December 2020 to 4 May 2021, of which the Van der Mescht email of 24 February 2021 was part, which it unsuccessfully sought to have struck based on its argument, first, that DFA, being the applicant in this matter, ought to have made out its case in its founding papers and,

second, that the *Plascon – Evans* test ought to be applied against the applicant and that the applicant's version on the papers ought to be rejected.

[20] The first obvious stumbling block in the way of Bluecentrix's arguments in these regards is the fact that these same arguments, concerning the same papers filed by Bluecentrix, failed at the provisional liquidation stage before Gamble, J.

[21] Nevertheless, I have considered Bluecentrix's arguments in the context of the entire string of emails of which the Van der Mescht email is part, as I, first, am not convinced that I have the power to revisit the admissibility finding of Gamble, J. Second, even if I was so empowered, I am unable to see any reason why the general rule that an applicant should make out its case in the founding papers or the *Plascon – Evans* test, assist Bluecentrix in this matter at all, particularly given the concession by Bluecentrix's counsel during argument that the string of emails forms part of the record and evidence before me following the dismissal of Bluecentrix's striking application before Gamble, J.

[22] The string of emails exchanged between various representatives of DFA and Bluecentrix, which followed after the Van der Mescht email of 24 February 2021 and which was allowed by Gamble, J must be considered against Van Rooyen's bald denials in the answering affidavit that: -

Bluecentrix had ever been a party to a contractual relationship with DFA;
- that Bluecentrix is indebted to DFA in any amount and, in his affidavit
"opposing rule nisi" (which was filed after the replying affidavit with the
string of emails and the judgment of Gamble, J); - and, - that Van der
Mescht had the authority to bind Bluecentrix when he sent the email of 24
February 2021.

[23] When Van Rooyen deposed to his "AFFIDAVIT OPPOSING RULE NISI" on 8
September 2023, he criticised the judgment of Gamble, J and the
dismissal of Bluecentrix's striking application.

[24] Despite its criticism, Bluecentrix nevertheless chose not to explain the
content and obvious factual conclusions to be drawn from the string of
emails in its "So-called AFFIDAVIT OPPOSING RULE NISI" of 18 September
2023 but instead persisted with a bald denial that Van der Mescht had
authority to bind Bluecentrix and by reaffirming -

*"....that Bluecentrix does not agree with the Judgment (of
Gamble, J) and will seek, at the opposed hearing of this matter,
to rely, again on its answering affidavit and the points in limine
therein, which, I have been advised are strong and should have
led to a dismissal of the applicant's case which must I understand,
be made out in its founding affidavit.*

10. *I have further been advised that a court at the final stage of
winding-up proceedings is obliged to apply a different evidentiary*

test to the papers and that the Plascon – Evans rule applies. That being the case, I confirm the contents of the answering affidavit and Bluecentrix's reliance thereon."

[25] This course adopted by Bluecentrix in my view ignores the onus on it to show that it is indeed able to pay its debts, or that it is not indebted to DFA at all in an amount not exceeding R100-00. The string of emails shows, *inter alia*, the following: -

[a] that Van Rooyen and André Pretorius (who Van Rooyen alleged was a director of another company, also purportedly trading under the name "Smartswitch") were copied in on emails sent by Van der Mescht of Bluecentrix and Roelien Nieuwoudt of DFA wherein the outstanding amounts due to DFA were discussed and payment arrangements addressed;

[b] that Van Rooyen in an email of 18 December 2020, which was addressed to, *inter alia*, Roelien Nieuwoudt of DFA and André Pretorius, calculated the total amount outstanding to DFA in the amount of R1,094,155.87, as set out in a schedule attached to this email;

[c] that Van der Mescht on behalf of Bluecentrix made a lumpsum offer in an amount of R900,000-00, which was rejected by Roelien

Nieuwoudt of DFA in an email of 3 March 2021, which was copied, *inter alia*, to Van Rooyen and André Pretorius;

[d] that André Pretorius of Smartswitch in an email of 4 May 2021 addressed to Roelien Nieuwoudt of DFA and copied, *inter alia*, to Van der Mescht and Van Rooyen under the heading "RE: *Acknowledgement of Debt*" for all intents and purposes acknowledged indebtedness to DFA, agreed that a "payment plan" which had to be affordable for Smartswitch had to be signed, and urged DFA not to proceed with the disconnection of services to Bluecentrix.

[26] It follows from a consideration of the string of emails that Van Rooyen's bald denial that Van der Mescht had been authorised by Bluecentrix to write and send the email of 24 February 2021, as well as his bald denial that Bluecentrix is indebted to DFA in any amount, fail to be categorically rejected. Furthermore, Van Rooyen's allegation that André Pretorius was a director of another company and therefore could not speak for Bluecentrix t/a Smartswitch is likewise rejected, for the reasons that I have already elaborated on. Van Rooyen, Pretorius and Van der Mesch all partook in the narrative of acknowledgements of debt and offers of payment that flowed from the string of emails.

[27] In my view, the various acknowledgements of debt by Bluecentrix in the string of emails called for a convincing explanation to destroy the inevitable conclusion, not only that the debt was not genuinely disputed, but also the ineluctable conclusion that Bluecentrix is commercially insolvent. (see in this regard the similar conclusion drawn by Francis, J, in **Electrolux South Africa (Pty) Ltd vs Rentek Consulting (Pty) Ltd**⁴ with reference to **Body Corporate of Fish Eagle vs Group Twelve Investments**⁵). It has been reiterated by the SCA in **Afgri Operations Ltd vs Hamba Fleet (Pty) Ltd**⁶ that where the respondent's indebtedness has *prima facie*, been established, the onus is on it to show that this indebtedness is indeed disputed on *bona fide* and reasonable grounds.

[28] Bluecentrix sought to rely on the **Plascon – Evans** test and the **Badenhorst** rule to convince me that at the final liquidation stage, I must accept the version of the respondent, Bluecentrix unless its version is far-fetched and untenable. As pointed out by Francis, J in **Electrolux (para 27)**, “Rodgers, J expressed the view (in **Orestisolve**) that the **Badenhorst** rule only applied at the provision stage of liquidation proceedings where there was a factual dispute relating to the Respondent's liability to the Applicant, and the test to be applied for a final liquidation order where material facts are in dispute is the **Plascon – Evans** test, as expressed in **Plascon Evans Paints Ltd vs Van Riebeeck Paints (Pty) Ltd 1984 (3) SA 623 (A)**. Thus, where an

⁴ 2023 (6) SA 452 (WCC), para 32 and 33

⁵ 2003 (5) SA 414 (W) at 424 B - C

⁶ 2022 (1) SA 91 (SCA), para [6]

*Applicant seeks final relief in liquidation proceedings and there are conflicting versions of fact, the court must accept the version of the Respondent together with any facts admitted in the Applicant's papers, unless the Respondent's version is far-fetched and clearly untenable. With respect, I am of the view that both the **Badenhorst** rule and **Plascon-Evans** test must be applied where there is a factual dispute in respect of a Respondent's indebtedness in an application for a liquidation order: Quite simply, the **Badenhorst** rule and **Plascon-Evans** test serve different purposes."*

- [29] It is not necessary for me to express a view on whether both the **Badenhorst** rule and **Plascon – Evans** test must be applied where there is a factual dispute in respect of a respondent's indebtedness in an application for a final liquidation order, as in this matter I find that there is no genuine factual dispute on the papers before me at final liquidation stage. Bluecentrix failed, as noted, to provide a convincing explanation for the various acknowledgements of debt that one finds in the string of emails. Despite having availed itself of the opportunity, after being placed under provisional liquidation, to file a so-called "affidavit opposing rule nisi", a supplementary affidavit as well as a further supplementary affidavit, Bluecentrix, as the respondent in this matter never put up a factual version which upon the application of the **Plascon – Evans** test ought to be accepted by this court at the final liquidation stage. Instead, Bluecentrix's explanation boiled down to the same bald denials (which

were rejected by Gamble, J at the provisional liquidation stage) that Pretorius and Van der Mescht had the authority to bind Bluecentrix on the basis that neither was a director of Bluecentrix. During argument, I asked Bluecentrix's counsel why Van Rooyen never explained the true factual context of the string of emails from Bluecentrix's viewpoint as well as his own involvement as is evident from the string of emails, in acknowledging Bluecentrix's debt and formulating an offer to DFA. The response proffered to me was to the effect that Bluecentrix had no obligation to do so because it only had to respond to the case that DFA made out in its founding papers. I find Bluecentrix's explanation far-fetched and clearly untenable.

[30] I accordingly find that Bluecentrix has not *bona fide* disputed its indebtedness to DFA and that it failed to acquit itself of the onus to show that it is able to pay its debts.

[31] As noted, I do not find it necessary to determine the admissibility of the provisional liquidators' preliminary report as it is not necessary for me to have regard thereto to reach a finding on Bluecentrix's solvency and whether a final winding-up order should be granted.

Prescription

[32] It was argued on behalf of Bluecentrix that the email sent by André Pretorius to Roelien Nieuwoudt of DFA and copied, *inter alia*, to Van der Mescht and Van Rooyen, on **4 May 2021**, with the subject heading: "Re: *Acknowledgement of Debt*" does not constitute "*an acknowledgement of liability*" as contemplated by section 14 of the Prescription Act, as André Pretorius does not work for, nor is a director of, Bluecentrix, but is, in fact, the sole director of a different company with the name Smartswitch (Pty) Ltd. Bluecentrix invited this court to find that DFA's contentions regarding Pretorius' authority to acknowledge liability on the part of the Bluecentrix ought to be rejected upon application of the **Plascon – Evans** test. I disagree. Bluecentrix's version in respect of the authority of both Pretorius and Mau van der Mescht is not only far-fetched but borders on disingenuity. I have dealt with this feature of the respondent's case hereinabove.

[33] This court invited both the counsel for DFA and Bluecentrix to make submissions on the narrow issue regarding the interruption of prescription and whether the string of emails between DFA and Bluecentrix that began on **14 December 2020** and ended on **4 May 2021**⁷, should all be read together, or whether the court may only take into account those emails that fell within three years from the date of the hearing, for purposes of determining whether prescription was interrupted.

⁷ Annexures RA1 to RA3 to the Applicant's replying affidavit

[34] On behalf of Bluecentrix, it was argued that Pretorius' email of **4 May 2021** did not by itself interrupt prescription as the interruption of prescription ought to occur at a specific point in time and that it is not a "cumulative act".

[35] Bluecentrix's argument loses sight of section 14(1) of the Prescription Act, which determines that the running of prescription "*shall be interrupted by an express or tacit acknowledgement of liability by the debtor.*" (emphasis provided)

[36] The following extract from **Cape Town Municipality vs Allie N.O.**⁸ which was quoted with the approval by the SCA⁹, elucidates the meaning of the word "*tacit*" in section 14 of the Prescription Act:

"Secondly, full weight must be given to the Legislature's use of the word "*tacit*" in S14(1) of the Act. In other words, one must have regard not only to the debtor's word but also to his conduct, in one's quest for an acknowledgement of liability. That, in turn, opens the door to various possibilities. One may have a case in which the act of the debtor which is said to be an acknowledgement of liability is plain and unambiguous. His prior conduct would then be academic. On the other hand, one may

⁸ Cape Town Municipality vs Allie N.O. 1981 (2) SA 1 (C) at 7 B – 8 G.

⁹ Investec Bank Limited vs Erf 436 Elandsport (Pty) Ltd & Others 2021 (1) SA 28 (SCA), para [29]; Madibeng Local Municipality vs Public Investment Corporation Ltd 2018(6) SA 55 (SCA), para [28]

have a case where the particular act or conduct which is said to be an acknowledgement of liability is not as plain and unambiguous. In that event, I see no reason why it should be regarded in vacuo and without taking into account the conduct of the debtor which preceded it. If the preceding conduct throws light upon the interpretation which should be accorded to the later act or conduct which is said to be an acknowledgement of liability, it would be wrong to insist upon the later act or conduct being viewed in isolation. In the end, of course, one must also be able to say when the acknowledgement of liability was made, for otherwise it would not be possible to say from what day prescription commenced to run afresh.

Thirdly, the test is objective. What did the debtor's conduct convey outwardly? I think that this must be so because the concept of a tacit acknowledgement of liability is irreconcilable with the debtor being permitted to negate or nullify the impression that his outward conduct conveyed, by claiming ex post facto to have had a subjective intent which is at odds with his outward conduct....."

- [37] Accordingly, the email of Pretorius of **4 May 2021** should not be regarded in vacuo without taking into account the conduct of the debtor which preceded it, including the string of emails before and after **4 May 2021**. I find Bluecentrix's contention that Pretorius could not have bound Bluecentrix with this email, as utterly implausible. Van Rooyen,

Bluecentrix's only director and deponent to its papers filed in this matter, never explained why he was copied in on this email and why he did not distance himself and Bluecentrix from this email if he seriously believed that Pretorius was acting without any authority when he sent the email to DFA.

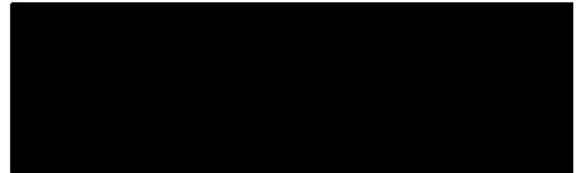
[38] Bluecentrix raised prescription as a defence for the first time in its answering papers. DFA was therefore entitled to respond thereto in its replying papers. In this regard, it was in my view permissible for DFA to introduce the string of emails in its replying papers, not only in response to prescription raised by Bluecentrix but also to place Van der Mesch's email of **24 February 2021** and his authority to make statements regarding Bluecentrix's financial inability to repay its debt into context. Bluecentrix's resort to bald denials and taciturnity regarding the various engagements between DFA and Bluecentrix as alleged in DFA's founding affidavit, caused Bluecentrix to be hung by its own petard.

ORDER

[39] Accordingly, the following order is granted:

[39.1] The Respondent, Bluecentrix (Pty) Ltd t/a Smartswitch, is placed under final liquidation.

[39.2] The costs of the Applicant, Dark Fibre Africa (Pty) Ltd, are to be costs in the liquidation of the Respondent.

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SCHREUDER, AJ