



**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** 19 November 2020

**STATUS** Immediate

***Please note that the media summary is for the benefit of the media and does not form part of the judgment.***

*Knoop and Another NNO v Gupta (1) (115/2020) [2020] ZASCA 149 (19 November 2020)*

After the hearing on 6 November 2020, the court made an order upholding the urgent appeal by Mr Knoop and Mr Klopper against an order authorising their removal as business rescue practitioners (BRPs) in respect of two companies Islandsite Investments 180 (Pty) Ltd and Confident Concept (Pty) Ltd. The companies were owned by the Gupta family, consisting of Mrs Chetali Gupta, her husband, Mr Atul Gupta, and his brothers, Mr Arti and Mr Rajesh Gupta. Islandsite controls Oakbay Investments (Pty) Ltd and through it the companies constituting the Oakbay Group. They and six other companies in the Oakbay Group had become 'unbanked' as a result of the family being associated with allegations of 'State capture'. Resolutions were passed to place all eight companies under supervision and business rescue. Mr Knoop and Mr Klopper were appointed as BRPs in respect of Islandsite and Mr Knoop as BRP in respect of Confident Concept.

Disputes arose between the BRPs and representatives of the Gupta family and the Oakbay Group. This led to considerable litigation. In November 2018, Mrs Gupta applied to have Mr Knoop and Mr Klopper removed as BRPs in respect of the two companies. The full court of the Gauteng Division of the High Court, Pretoria upheld the application and granted leave to appeal to the SCA. At the

same time, it granted an execution order permitting Mrs Gupta to act upon the removal order immediately. However, Mr Knoop and Mr Klopper had a statutory right to an extremely urgent appeal against that decision. It was that urgent appeal that the court heard first on 6 November 2020. Pending the hearing of the urgent appeal the statute provided that the execution order was suspended. The full court, however, granted an order that the urgent appeal would not suspend the operation of the execution order and new BRPs were appointed in respect of the two companies. In the first instance the new BRPs purported to withdraw Mr Knoop and Mr Klopper's appeals against the removal judgment. Mrs Gupta contended that this meant they had no legal standing to pursue the appeal. On 12 October, the new BRP of Islandsite, Mr Mahomed Tayob, applied for leave to intervene in the main appeal for the purpose of leading further evidence. Four days later he purported to terminate the business rescue. The new BRP in respect of Confident Concept, Mr Naidoo, did the same on 23 October 2020. As a result of these actions the court directed that the urgent appeal would be dealt with at the outset of the hearing on 6 November 2020. The SCA first dealt with the validity of the full court's order overriding the suspension of the execution order. It held that this was invalid as it flew in the face of the express provisions of the statute giving the right of appeal. Furthermore, it had been granted by the court of its own volition without notice to the parties and without affording them an opportunity to make submissions in regard to such an order.

The invalidity of the order meant that pending the outcome of the urgent appeal Mr Knoop and Mr Klopper remained the duly appointed BRPs in respect of Islandsite and Confident Concept. The withdrawal of their appeals against their removal was invalid and ineffective. The appointments of Mr Tayob and Mr Naidoo were also invalid as were their endeavours to terminate the business rescue process. Declaratory orders to this effect formed part of the court's order.

On the merits of the urgent appeal, the SCA pointed out that Mrs Gupta had been obliged to prove that the circumstances were exceptional, that she would suffer irreparable harm if the BRPs were not removed immediately and that the BRPs in turn would not suffer irreparable harm if they were removed immediately. It analysed the evidence in this regard and pointed out that there

was nothing exceptional in the circumstances of the case that provided a reason for departing from the norm that pending an appeal the execution of the judgment appealed against is suspended. The SCA also held that neither irreparable harm to Mrs Gupta nor the absence of irreparable harm to the BRPs had been established. In the circumstances the appeal was upheld after argument for the reasons set out in the judgment delivered today.