

Are insolvent estates entitled to claim money declared forfeit to the State?

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The recent SCA case of *South African Reserve Bank (SARB) v Maddocks NO* dealt with the legal consequences of blocking orders made against companies which subsequently went into liquidation.



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The Financial Intelligence Department of the SARB blocked the bank accounts of two companies, Sun Candle Products and Xinming Mountain Textile on the reasonable suspicion that the companies had contravened the Currency and Exchanges regulations by exporting large sums of monies from the country without the permission of the National Treasury, and that they had made advance payments for imported goods without submitting proof of importation of goods into the country to an authorised dealer. The blocking orders were issued during May and December of 2016.

Shortly thereafter a creditor applied for winding up of the companies which was lodged on 13 February 2017. The companies were finally wound up by the High Court on 10 March 2017. The *concursum creditorum* (meeting of the creditors, generally, to facilitate the equitable distribution of the estate) of each company was established on 13 February 2017.

Subsequent to the issue of the blocking orders and after the liquidation of the companies, the SARB issued forfeiture orders in respect of monies standing to the credit of the banking accounts of each of the companies. On the dates that the forfeiture orders were published in the Government Gazette being 14 July 2017 and 31 August 2018, the monies specified in the forfeiture orders became forfeited to the State and were deposited into the National Revenue Fund in terms of Regulations 22 A-C.

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The respondent liquidators demanded that the monies that were declared forfeited to the State be paid to them as due to the winding-up and the establishment of the *concursum creditorum*, the monies held in the bank accounts fell into the insolvent estates for distribution. They also claimed that SARB was a creditor and could not validly deal with the assets of the companies to the prejudice of other creditors.

The SCA held that the liquidation of the two companies did not nullify the blocking orders, nor were they terminated, and SARB was thus competent to issue the forfeiture orders which the banks had to comply with. Nor did the orders create a debtor–creditor relationship between SARB and the companies and the liquidators were therefore not entitled to claim that the blocked account monies fell into the estates of the insolvent companies.

Consequently, an insolvent estate is in no better position than a solvent one where assets may be lawfully attached and forfeited to the State in terms of the regulations.

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