

26 July 2022

CIRCULAR 27

THIS DOCUMENT IS A CIRCULAR TO THE AFFECTED PERSONS RELATING TO THE BUSINESS RESCUE PROCESS OF **UPAHLA CONSTRUCTION** IN TERMS OF THE COMPANIES ACT, 71 OF 2008 AS AMENDED (THE ACT).

OUTCOME OF THE 9TH MEETING OF CREDITORS AND AFFECTED PERSONS

The practitioner wishes to inform all affected persons of the outcome of the 8th meeting of creditors and affected persons for Upahla Construction held on the 22nd of July 2022. The practitioner started the meeting with a brief introduction and overview of what the meeting would entail in the form of an agenda.

Adjudication:

Both parties to the adjudication paid their respective fees for the adjudication and the report was released. The report was in favour of Upahla construction, but not to the full quantum of the claim that was originally tendered for.

The award in favour of Upahla is approximately R11.2m (excluding VAT) to be paid to Upahla in 2 instalments. The first payment will be for approximately R6m which will be paid within the next 60-90 days. These funds must be used to return to site and complete the project – upon completion of the project, the balance will be paid out to Upahla. (Please note these are not precise figures, just ballpark).

What this means for the Business Rescue; out of the first R6m Upahla will need approximately R2m to return to site, establish site and complete the project. Which leaves R4m which can be used to settle the secured creditors and if there is any surplus, same will be used for payment of the concurrent creditors. Once the second payment is made available, this too will be used to settle concurrent creditors.

Looking at the values given above, an initial proposal was made that the secured creditors will be settled in terms of their security and that concurrent creditors will receive no less than 50 cents in the rand on their claims over a period of 12 months. Meaning that concurrent creditors will receive of compromise of 50 cents in the rand on their claims.

There were multiple questions about this proposal and the practitioner was requested to show the calculation done to reach this value. The practitioner did give a brief explanation of the calculation. Showing that the overall debt of the business and the amount of money that will

be received from the adjudication will only cover a certain portion of the concurrent creditors. Also, during the continued period where the business was not being paid, they were still liable for maintaining sites and paying salaries etc. which forced the business into the position in which they find themselves today. There were many more questions regarding this, and some creditors present at the meeting were not quite satisfied with the explanation of the calculation.

Many creditors are aware of the process of business rescue and are not against a compromise in principle – the overwhelming majority seem to have issue with the proposed compromise of 50 cents in the rand.

Therefore, it is proposed that any of the creditors who so wish, could set up a meeting with the practitioner to sit down in person around a table to look at the facts of the business that lead the practitioner to make the proposal as set out above. Thereby allowing the creditors to see how and why the proposal was formulated as above and to discuss possibilities about going forward with the business rescue process. It is in the same vein that the plan is being requested to be postponed by a further 5 business days to allow such meeting to take place.

It was agreed to by the creditors that the publication of the proposed business rescue plan be extended by a further 5 business days (therefore will be published no later than the **19th of August 2022**). A meeting, as explained above, will also be called for some time next week.

It was also confirmed that the vehicle asset financing for the business will continue to be paid in the ordinary course of business and the secured creditors will be settled in full. The financing on the vehicle will however continue to be paid in the ordinary course of business until the contract reaches its conclusion.

Kind Regards

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