

3 March 2024

CIRCULAR 30

THIS DOCUMENT IS A CIRCULAR TO THE AFFECTED PERSONS RELATING TO THE BUSINESS RESCUE PROCESS OF **SURFACE PREPARATIONS EQUIPMENT AND COATINGS (PTY) LTD** IN TERMS OF THE COMPANIES ACT, 71 OF 2008 AS AMENDED (THE ACT).

UPDATE ON THE BUSINESS RESCUE PROCESS AND CONFIRMATION OF NO FURTHER CLAIMS

The business rescue practitioners wish to advise all the affected parties that the business rescue process for SPEC (Pty) Ltd (as above) is still ongoing.

A rescue plan has been published and adopted and is in the process of being implemented with the business rescue auctions having been scheduled to take place in late August and in September 2023, for the two auctions.

These auctions took place as per the adopted business rescue plan and as mentioned in the previous update, we are still awaiting transfer to take place on some of these properties and others are still in the process of being finalised. Once these properties are transferred, we will be in the position to make payment to the secured creditor only.

Furthermore, regarding claims received during the rescue process, please note the following:

The company became financially distressed and as a result filed for Business Rescue on the 3rd of March 2023.

This communication is not intended to deal with each, and every statement contained in various communications received and failure to do so, should not be construed as an admission or denial of any allegation so contained therein. We reserve our rights to deal with such statements at such time and in such forum as may arise.

The below information is of common cause relating to the Business Rescue Process for SPEC:

1. The proposed business rescue plan was published to all creditors known to the practitioners on the 18th of July 2023

- a. In terms of Section 150(5) of the Companies Act 71 of 2008.
2. The plan was then voted on and adopted by creditors on the 25th of July 2023.
 - a. In terms of Section 152 of the Companies Act 71 of 2008.
3. The adopted business rescue plan is in the process of being implemented as per the above update.
 - a. In terms of Section 152(8) of the Companies Act 71 of 2008.
4. Section 152(4) of the Act stipulates that a business rescue plan that has been adopted is binding on the company, and each of the creditors of the company and shareholders, whether or not such party was present at the meeting, voted in favour of the adoption of the plan or in the case of creditors, had proven their claims against the company.
5. Section 154(2) of the Act stipulates that if a business rescue plan has been approved and implemented, a creditor is not entitled to enforce any debt owed by the company immediately prior to the beginning of the business rescue process, except as provided for in the business rescue plan.
6. It is clear from the above that:
 - a. An adopted business rescue plan is binding on all creditors whether or not such creditor has proven a claim against the company in business rescue (section 152(4)(c));
 - b. A creditor may not enforce any debt owing immediately prior to commencement of the business rescue except as provided for in the business rescue plan (section 154(2)).
 - c. We further refer you to the Supreme Court of Appeal Judgment of Eravin Construction CC vs Jacobus Nicolaas Bekker N.O. 2016 ZASCA 30 in this regard.
7. We refer you to the following section contained in the adopted business rescue plan that reads:

“The implication of the abovementioned is that the creditors shall have no further right of recourse and shall not be entitled enforce the debt or any balance thereof owed by the Company or its sureties immediately before the beginning of the business rescue process as the business rescue plan does not provide for the institution of any further action. An extract from the Act is given below for ease of reference”

Section 154: Discharge of debts and claims

A business rescue plan may provide that, if it is implemented in accordance with its terms and conditions, a creditor who has acceded to the discharge of the whole or part of a debt owing to that creditor will lose the right to enforce the relevant debt or part of it.

If a business rescue plan has been approved and implemented in accordance with this Chapter, a creditor is not entitled to enforce any debt owed by the Company immediately before the beginning of the business rescue process, except to the extent provided for in the business rescue plan.”

8. Claims not forming part of the business rescue plan are no longer recoverable in law and no further claim under any circumstance could be entertained.

Kind Regards

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