

16 March 2022

## CIRCULAR 03

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).

### **OUTCOME OF THE 1<sup>ST</sup> MEETING OF CREDITORS**

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The business rescue practitioners wish to advise all the affected parties the outcome of the 1<sup>st</sup> meeting of creditors of **Surface Preparations Equipment and Coatings (Pty) Ltd** (Herein after referred to as "SPEC" or "The Business") - held on 15<sup>th</sup> of March 2023.

Mr Pattinson gave a brief introduction of the Business Rescue team and welcomed all of the affected persons to the meeting.

### **CONDITIONS FOR BUSINESS RESCUE**

The practitioner explained the process of filing for business rescue and why a business would consider business rescue and the conditions of filing for business rescue.

#### **1. The first question - Is the Company Financially distressed?**

**YES**

- 1.1. Based on information at hand, yes, the business cannot pay its debts as and when they become due and payable, therefore it is clear that the business is in financial distress in terms of Section 128(1)(f) of the Companies Act and has filed for Business Rescue in terms of Section 129 of the Companies Act.
- 1.2. Had the directors decided not to file for business rescue, they would be compelled in terms of Section 129(7) of the Act to deliver a formal written notice to every affected person detailing:
  - 1.2.1. That the business is in financial distress.
  - 1.2.2. The reasons for the financial distress.
  - 1.2.3. The reasons for the company's decision to not file for business rescue.
- 1.3. In short, and as a very high-level interpretation of the facts – the company found itself in a position where a substantial security has been requested. The full details of same will be addressed at the next meeting when the practitioners have done a further investigation and has taken the necessary opinions on the matter. However, it was clear that should the company have settled this security in full, the company would have had no option but to liquidate. The circular events relating to this security are currently being looked at but it is clear

that the security is intended as a performance guarantee against potential future contingent liabilities and therefore the debate as to whether this is seen as an indebtedness and currently due and payable.

- 1.4. Further, should the amount referred to above have been paid in full and the business subsequently liquidated, it is in all likelihood that a liquidator, once appointed, would consider the facts and would determine that the payment of such a security for a contingent liability would be an undue preference and a disposition without value and the monies would be returned to the liquidator in any event for the service of the creditors of the business – essentially resulting in the unnecessary liquidation of a business that would otherwise continue to employ many staff.

## 2. Second Question - Does a reasonable prospect of a rescue exist? YES

- 2.1. Based on the information provided to the practitioner to date.

2.1.1. At minimum a better outcome than traditional liquidation will be sought.

- 2.2. The practitioner believes that there is a reasonable prospect of success as will be discussed later in the meeting regarding the business' current operations.

2.2.1. Further, should a rehabilitation of the business not be possible, the practitioners will be required to at the very least seek a better outcome for the affected persons than that which they would receive in an immediate and traditional liquidation. As in terms of Section 128(1)(b)(ii) of the Companies Act and the judgment of Carrol v Michael Carrol.

## Information Provided

\*The practitioners hereby would like to confirm that the company went into business rescue on the 3<sup>rd</sup> of March 2023. The practitioners only received their confirmation of appointments on the 8<sup>th</sup> of March 2023. The practitioners have had less than a full week to evaluate, scrutinise, confirm and consider the full events leading up to the business rescue process. Therefore, based on these initial and very high-level investigations into the affairs of the company, the practitioners present the following:

- **Liabilities** R 4 170 620 Trade Creditors + R 10 000 000 Overdraft + Disputed Claim R 6 500 000 (security only – continued negotiation)
- **Debtors** R 1 231 172
- **Bad debt to collect / Litigation and other possible collections** R 28 240 939,29 (in excess of 14 current litigation matters)
  - Please note that there is at no point any guarantee that all this debt is recoverable – there is however a possibility.
- **Assets** R 13 068 717,31 (vehicles not included)
- **Security for liabilities** (immovable property) R 29 685 000 (Encumbered - R 10 405 758 = R 19 915 508,74 as a potential)
- **Future work** R 66 000 000 (R 36 000 000 already awarded or in process)

The practitioners will at the next meeting be in a position to provide more detail regarding the above and to confirm the accuracy thereof.

## REASONS FOR THE FINANCIAL DISTRESS:

### 1. The difficulties

- a. R 6,5m in cash security demanded by a customer of the business.
- b. **Options available**
  - i. Pay security and liquidate the business.
  - ii. If liquidated, security would be paid back to liquidator (disposition without value)
  - iii. Submit to Business Rescue and balance the rights of all affected persons.
    1. Per the Companies Act and being the responsible decision made by the directors of the business.
    2. All other options were considered before the decision to submit to business rescue.
- c. **We will continue to seek out options to cover the security and continue to work towards profitability of the business.**

## Important Dates

Board Resolution Submitted	: 3 March 2023, (133 Protection date)
Practitioners Appointed	: 8 March 2023
1 <sup>st</sup> Meeting of Creditors	: 15 March 2023

## FORMING A COMMITTEE

1. The Business Rescue Practitioners advised the attendees that they can form a committee of creditors in terms of section 147 of the Act.
  - 1.1. The attendees voted against this proposal.
    - 1.1.1. The business rescue practitioner will thus interact with all the creditors of the business directly.

## REQUEST FOR AN EXTENSION

1. The plan is currently due to be published on the 14<sup>th</sup> of April 2023 – not having given consideration to the *dies non* days in terms of upcoming public holidays.
2. Based on the discussions had in this meeting, it is proposed that another meeting similar to this one is held on the 5<sup>th</sup> of April 2023 so that we can provide further feedback to the creditors. Should this not be granted, the plan will be due on the 20<sup>th</sup> of April 2023.
3. A unanimous vote was achieved in this regard and therefore the next meeting will be on the 5<sup>th</sup> of April 2023 where a further update will be given, and further extensions be given should it be necessary.

## **PROOF OF CLAIMS**

1. The practitioner confirmed that Jaco Durandt has sent out the proof of claim forms and these proof of claim forms must be completed and returned to Jaco Durandt on the prescribed document. Same is also available – along with all other documentation relating to the business rescue – on the website of the practitioner at <https://pattinson.biz/> under the “Business Rescue” tab at the top right of the page.

## **QUESTIONS / COMMENTS**

1. The bad debt / litigation portion, this seems like it would be sufficient to cover the indebtedness of the business.
  - a. The practitioners confirmed that yes, should all those funds be available it would be possible to resolve the current financial distress. It was again confirmed that it is in no way guaranteed that the funds would be recoverable but all attempts are being made.
  
2. Regarding the current debtors of the business, do those debtors not have insurance or other means of paying the company the money?
  - a. The practitioners confirmed that the debtors (of roughly R1.2m as above) are not yet beyond their ordinary payment terms and thus not yet needed to consider such steps. The R1.2m mentioned above is what is currently due in the ordinary course of business and the ordinary collection procedures will follow. Should these debts however become overdue outside of the ordinary course, the practitioners will investigate all manner of collection including the likes of CGIC and other insurers, should same be applicable.

Kind Regards

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