



ARNOTOPCO

Circular Sixteen: To All Known Creditors and Other Affected Persons of Arnot Opco Proprietary Limited (Registration Number: 2019/072282/07) (In Business Rescue) (the “Company”)

16 August 2023

1. The purpose of this circular is to notify creditors and other affected persons of the 2 (two) urgent court applications (“Applications”) issued by:
 - 1.1 Wescoal Mining Proprietary Limited (“Wescoal”) and Salungano Group Limited (“Salungano”), as the first and second applicants against the Company, Phahlani Lincoln Mkhombo (“Mkhombo”) in his capacity as the business rescue practitioner (“BRP”) and Ndalamo Coal Proprietary Limited (“Ndalamo”), as the first, second and third respondents, respectively (“first application”): and
 - 1.2 Thatha Project Resources Proprietary Limited (“Thatha Projects”), Nomqibelo Trading Enterprises Close Corporation (“Nomqibelo”), Mpendulo & Sons Proprietary Limited (“Mpendulo”), Maler Dynamics Proprietary Limited (“Maler Dynamics”), Meljon Construction and Projects Proprietary Limited (“Meljon Construction”) and ZGM Construction and Projects Close Corporation (“ZGM Construction”), as first, second, third, fourth, fifth and sixth applicants against the Company, Mkhombo in his capacity as the BRP and Ndalamo, as first, second and third respondents, respectively (“second application”).
2. Wescoal and Salungano instituted legal proceedings seeking an order declaring that:
 - 2.1 the applicants’ non-compliance with the Uniform Rules of Court concerning forms, service and time period otherwise applicable be condoned and permitting this application to be enrolled, heard, and adjudicated upon as an urgent application in terms of Uniform Rule 6(12);
 - 2.2 leave is granted in terms of section 133(1)(b) of the Companies Act 71 of 2008 (“the Companies Act”) to the applicants to commence and proceed with the court application;
 - 2.3 Pending the applicants institution of further proceedings within 20 days from date of compliance with the order granted pursuant to paragraph 4 of the court application, interdicting the first respondent from reconvening any further creditors’ meeting to consider a revised business rescue plan (“Plan”) and/or take any further steps



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contrary to the Plan that was adopted at a meeting held in terms of section 151 of the Companies Act on 28 July 2023;

- 2.4 compelling the first respondent to, within 2 court days of the order, furnish the applicants with or allow the applicants to inspect during business hours after being afforded no less than two hours' notice;
 - 2.5 In the event that the applicants does not institute any further proceedings in terms of paragraph 3 of the order within the time period therein provided, then the order in paragraph 3 will lapse and it will be deemed that no Plan was duly approved and adopted in terms of section 152 of the Companies Act at the meeting of 28 July 2023;
 - 2.6 declaring that there has not been a vote of approval from the holders of voting interests to prepare and publish a revised Plan as contemplated in section 153(1)(a)(i) of the Companies Act and that the first respondent, if the order in paragraph 3 above lapses, directing that the first respondent is obliged to reconvene the meeting in terms of section 151 of the Companies Act held on 28 July 2023 for purposes of following the processes contemplated in section 153 of the Companies Act;
 - 2.7 in the alternative to paragraph 6 above and in the event that the order in paragraph 3 lapses, first respondent is to reconvene the section 151 meeting within ten business days of paragraph 3 of the order lapsing;
 - 2.8 the first respondent, *de bonis propriis*, alternatively the second respondent, is to pay the costs of this application including costs of two counsel, and in event of opposition of this application by any other party, such other party(ies) is/are to pay the costs jointly and severally with the first respondent/second respondent, the one paying the other to be absolved; and
 - 2.9 granting the applicants such further and/or alternative relief as the court deems fit.
 - 2.10 A copy of the urgent court application is attached for ease of reference.
3. The second application was issued by Thatha Projects, Nomqibelo, Mpendulo, Maler Dynamics, Meljon Construction and ZGM Construction for an order declaring that:
- 3.1 directing that the matter be heard as one of urgency and to dispense with the forms and services provided for in the Uniform Rules of Court and allowing the matter to proceed as an urgent application as is provided for in Rule 6(12) of the Uniform Rules of Court as per the directions of the Court;
 - 3.2 that the first to sixth applicants are concurrent creditors of the second respondent;
 - 3.3 that the that first to sixth applicants, each in their own respective capacity, have, as concurrent creditors of the second respondent, a voting interest to be determined by the value of the amount owed to the second respondent;
 - 3.4 the first to sixth applicants rights in business rescue, which *inter alia* includes:

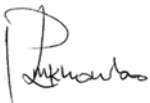
- 3.4.1 receive notice of each court proceeding, decision, meeting or other relevant event concerning the business rescue;
 - 3.4.2 participate in any court proceeding arising during the business rescue proceedings;
 - 3.4.3 make proposals for a Plan to the BRP;
 - 3.4.4 right to vote to amend, approve or reject a proposed Plan; and
 - 3.4.5 to form a creditor's committee and be consulted, through this committee, by the BRP during the development of the Plan.
- 3.5 That no plan was approved and adopted in terms of section 152 of the Companies Act at the meeting of 28 July 2023.
- 3.6 In the event of it being found that a Plan was adopted on 28 July 2023, declaring that such Plan is void and is set aside.
- 3.7 That there has not been a vote for approval from the holders of voting interests to prepare and publish a Plan as contemplated in section 153(1)(a)(i) of the Companies Act and that the first respondent is obliged to reconvene the meeting of creditors in terms of section 151 of the Companies Act, once the rights of the first to sixth applicants are recognised, for purposes of following the processes contemplated in section 153 of the Companies Act.
- 3.8 The first respondent is compelled to issue, with 2 court days of this order being granted, a revised list of creditors reflecting the names of the first to sixth applicants as concurrent creditors of the second respondent.
- 3.9 Pending the applicant's institution of further proceedings within 1 month from date of compliance with the order granted pursuant to paragraph 2 – 8 of the application, alternatively, until the dispute with the first respondent is resolved, whereby the rights of the first to sixth applicants are recognised as concurrent creditors of the second respondent, the first respondent is interdicted from:
- 3.9.1 implementing the Plan adopted on 28 July 2023; and
 - 3.9.2 reconvening any other creditor's meeting to consider a revised Plan and/or taking any further steps in furtherance of business rescue which may be to the detriment of the rights of the applicants.
- 3.10 The first respondent is directed to pay costs of this application on the attorney and client scale; and
- 3.11 Such further or alternative relief as the court may deem to be just and equitable.

3.12 A copy of the urgent court application is attached for ease of reference.

4. The Company and the BRP have considered the Applications and will be opposing the Applications. Accordingly, the BRP has instructed the Company's attorneys to oppose the 2 Applications.
5. Creditors will recall that on 11 August 2023, the BRP published a revised Plan and issued a notice to reconvene a meeting of creditors to be held on 21 August 2023 in terms of section 151 of the Companies Act to consider and vote on the revised Plan.
6. In light of the pending 2 Applications, the BRP is of the view that the creditors meeting scheduled for 21 August 2023 to consider and vote on the revised Plan, should be adjourned to 05 September 2023 in terms of section 151(3) of the Companies Act as it is both necessary and expedient to do so in light of the 2 urgent Applications.
7. In this regard, the BRP hereby informs creditors and other affected persons that the meeting scheduled on 21 August 2023 will be adjourned to 05 September 2023 in terms of section 151(3).
8. Lastly, the BRP would like to invite creditors and other affected persons who may wish to inspect the results or outcome of the voting process of the meetings held on 28 July 2023 to contact the BRP at Arnotopcobr@gcs-sa.co.za in order to make the necessary arrangements.
9. **Conclusion**

Creditors and other affected persons of the Company may direct their queries in relation to this circular to: Arnotopcobr@gcs-sa.co.za, but are reminded that all relevant notices and documents (including the Applications) are available online at this link: <https://arnot-opco.com/business-resscue/>.

Yours Faithfully,



Phahlani Mkhombo

Business Rescue Practitioner

Arnot Opco Proprietary Limited (in Business Rescue)