



ARNOTOPCO

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

19 October 2023

1. We refer to Circular 19 dated 04 October 2023 and to the judgment that was handed down on 2 October by Judge Stuart Wilson concerning the urgent court application (“**the application**”) launched by Wescoal Mining Proprietary Limited (in Business Rescue) (“**Wescoal**”) and Salungano Group Limited (“**Salungano**”) as the first and second applicants against the Company, Mr. Phahlani Lincoln Mkhombo (“**Mkhombo**”) in his capacity as the business rescue practitioner of the Company (“**the BRP**”), Ndalamo Coal Proprietary Limited (“**Ndalamo**”) and Mashwayi Projects Proprietary Limited (“**Mashwayi**”) as the first, second, third and fourth respondents, respectively.
2. Creditors will recall that the BRP was notified by Mashwayi that it will be initiating appeal proceedings wherein it intends on appealing the judgment in the application.
3. On 12 October 2023, the BRP’s legal representatives received Mashwayi’s Notice of Leave to Appeal (“**the Notice**”). Attached herein.
4. In brief, Mashwayi has:
 - 4.1. Sought leave to appeal to the Supreme Court of Appeal (“**the SCA**”) on the basis that Judge Wilson erred in his finding in the Wescoal matter; and
 - 4.2. The above appeal is to be decided before the SCA instead of a full bench of the High Court as: the matter involves questions of law which are of significant importance to the landscape and implementation of business rescue proceedings in South Africa; the aforesaid has a significant bearing on the restructuring profession at large; and, the proper administration of justice warrants the consideration of the SCA.
5. Pursuant to service of the enclosed Notice, Judge Wilson’s secretary, Mr Chauke, addressed email correspondence which provided *inter alia* that:
 - 5.1. Any party wishing to do so, must show cause, by no later than noon on 16 October 2023 –
 - 5.1.1. Why, in light of the novel and far-reaching arguments accepted by the court a quo, leave to appeal ought not to be granted to the Supreme Court of Appeal, with costs in the application being costs in the appeal; and/or



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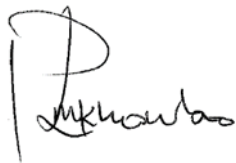
5.1.2. why the application for leave to appeal ought not to be decided urgently and on the papers, without an oral hearing.

6. Notably, the time period for the filing of any opposition to the granting of the leave to appeal has since elapsed, and no party has raised any such opposition.
7. On 16 October 2023, the BRP's legal representatives received Ndalamo's execution application in terms of section 18(3) of the Superior Courts Act ("**the interim execution application**"). Attached herein.
8. In brief, Ndalamo has issued an interim execution application wherein it seeks to:
 - 8.1 Declare that the order granted by Judge Wilson on 2 October 2023, is not suspended pending the outcome of the appeal;
 - 8.2 Enforce the abovementioned order pending the outcome of the appeal; and
 - 8.3 Have costs awarded against any party who opposes the application.
9. Ndalamo further addressed correspondence to Judge Wilson requesting him to, as a matter of urgency, furnish the parties with directives for their further conduct in terms of the section 18(3) application including setting time-periods for the filing of papers and the hearing of the section 18(3) application.
10. On 17 October 2023, and pursuant to the various correspondence addressed to Judge Wilson, the BRP's legal representatives were furnished with correspondence from Mr Chauke, advising as follows:
 - 10.1 The application for leave to appeal and the application for interim execution are set down for hearing together in open court on Monday 30 October 2023 at 10am;
 - 10.2 The respondents' answering affidavit in the application for interim execution must be served and filed by no later than Monday 23 October 2023;
 - 10.3 The applicants' replying affidavit in the application for interim execution must be served and filed by Wednesday 25 October 2023;
 - 10.4 Heads of argument, which must address the merits of both the application for leave to appeal, and the application for interim execution, must be served and filed by no later than Friday 27 October 2023;
 - 10.5 The attorney for the applicant in the application for interim execution must ensure that the papers in the interim execution matter and in the application for leave to appeal are uploaded to Caselines under a new tab headed "Applications for leave to appeal and interim execution". The papers must appear in chronological order; and
 - 10.6 The filing deadlines set out in the directive may be varied by agreement between the parties, provided that all the material required is uploaded to Caselines by no later

than 4pm on Friday 27 October 2023.

11. The BRP will keep creditors and other affected persons abreast of any developments, should a need arise.
12. Creditors and other affected persons of the Company may direct their queries concerning this circular to Arnotopcobr@gcs-sa.co.za but are reminded that all relevant notices and documents (including the Judgement) are available online at this link: <https://arnotopco.com/business-resscue/>.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Phahlani Mkhombo N.O.', written in a cursive style.

Phahlani Mkhombo N.O.

Business Rescue Practitioner

Arnot Opco Proprietary Limited (in Business Rescue)