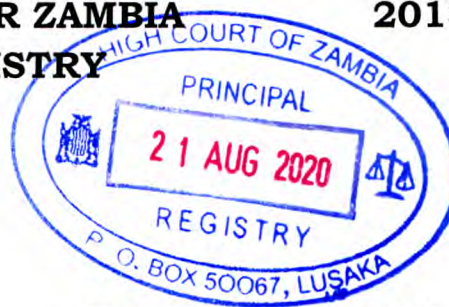


**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**
(Civil Jurisdiction)

2018/HP/1741



IN THE MATTER OF :

NDOLA LIME COMPANY

AND

IN THE MATTER OF:

**THE CORPORATE INSOLVENCY ACT NO
9 OF 2017**

AND

IN THE MATTER OF:

**SECTION 23 OF THE CORPORATE
INSOLVENCY ACT NO. 9 OF 2017 THE
LAWS OF ZAMBIA**

AND

IN THE MATTER OF:

**AN APPLICATION TO PLACE NDOLA
LIME COMPANY LIMITED UNDER
SUPERVISION AND COMMENCEMENT
OF BUSINESS RESCUE PROCEEDING**

BETWEEN:

SIMON LENGWE

1ST APPLICANT

MAKOWA CHHINDA

2ND APPLICANT

AND

NDOLA LIME COMPANY LIMITED

RESPONDENT

ZCCM INVESTMENTS HOLDING LIMITED

1ST AFFECTED PERSON

KOBIL ZAMBIA LIMITED

2ND AFFECTED PERSON

PYTHISON MWAPE

3RD AFFECTED PERSON

JONES CHINDAMBA

4TH AFFECTED PERSON

JACOB SIMON SIKANYIKA

5TH AFFECTED PERSON

RONERT SABAO

6TH AFFECTED PERSON



BEFORE HONORABLE JUSTICE MR. MWILA CHITABO, SC IN CHAMBER ON 21ST DAY OF AUGUST, 2020.

For the Applicants:

Mr. P. Chola of Messrs Lewis Nathan and Advocates

For the Respondents:

No Appearance

For the 1st Affected Party:

Mr. M. Lungu of Messra Lungu Simwanza and Co.

For the 2nd to 6th Affected Parties:

No appearance

RULING

Legislation:

1. The Corporate Insolvency Act No. 9 of 2017

This was an application by the 1st Affected Person for an Order to Sanction an Approved Scheme of Arrangement and Reconstruction pursuant to section 48 of the Corporate Insolvency Act No. 9 of 2017. The application was supported by an affidavit in support filed into Court on 23rd July, 2020 and sworn by one Mabvuto Chipata.

The affidavit revealed that the Respondent Company had been unable to pay debts as and when they fell due and had largely depended on the financial assistance of the 1st Affected Party to continue as an ongoing concern.

The Applicants on 5th October, 2018 applied to place the company under business rescue and supervision. It further revealed that the company was insolvent because its liabilities far exceeded the value of its assets.

It was contended that within the business rescue and supervision, the 1st Affected Party applied for and was granted an order that a meeting of the Respondent's creditors is convened to consider and approve the restructuring of the Respondent through a Scheme of Arrangement. The affidavit contended that the meeting was duly held and the 1st Affected party had provided funds for the payment of trade creditors, former employee arrears and terminal benefits.

When the matter came up for hearing of the application on 21st August 2020, the Learned Counsel for the 1st Affected Party highlighted that as evidenced by the affidavit in support Notices of the meeting, an explanatory note as well as the proposals of the restructuring and the rights of the creditors was sent to all the creditors. In addition, the notices were advertised in the Times of Zambia as well as the Daily Mail inviting creditors to attend and vote on a proposed scheme of arrangement.

Counsel told the Court that the affidavit also revealed that on 10th June, 2020 the creditors meeting was duly convened and the creditors voted to approve the proposals contained in the Scheme of Arrangement.

It was his submission that the application before court was being made to sanction what the creditors had already approved. He contended that in accordance with section 46 of the Corporate Insolvency Act No. 9 of 2017, creditors holding the value of at least 75% of the total debt owed to the company ought to vote in favour of the Scheme Arrangement for it to be approved.

In this case, the Zambia Revenue Authority and 1st Affected Party were collectively owed a total of K1 billion which represented 96% of the liabilities of Respondent. The Zambia Revenue Authority and the 1st Affected Party voted in favour of the Scheme of Arrangement and therefore was approved by creditors holding a total of 96% of the liabilities of the Company. The minutes of the creditors meeting

have been exhibited in the affidavit in support of the application and marked as **"MC2"**.

Counsel told the Court that the approved proposals were as follows:

- a) To transfer all the assets and business of the Respondent to Limestone Resources Limited which is a wholly owned ZCCM subsidiary.
- b) Pay all approved claims to the extent of the principle amounts owed to all trade and other creditors as at the date of commencement of the Scheme of Arrangement. Further, that any unproved contingent liability shall be dealt with under the winding up of the Respondent.
- c) Declare redundant all employees of the Respondent and pay a retrenchment package in full and final settlement without any further recourse to the Courts of law.
- d) Impair all outstanding balances owed to the Zambia Revenue Authority and ZCCM IH as well as impair all interests and penalties owed to the NAPSA Pension Scheme.
- e) Create an environmental liability fund to cover the accrued environmental liability outstanding on the date of transfer of the Respondent's assets:
- f) Dissolve the Respondent with or without winding up.

Counsel contended that the application was to have these proposals as approved by the creditors sanctioned by this Court. In addition and consequential to the Scheme of Arrangement, the 1st Applicant was also applying that the business rescue proceedings be

terminated and the Interim Business Rescue Administrator be discharged. Further, he submitted that on account that there would still be transfer formalities between Ndola Lime Company and Limestone Resources. In view of that, the 1st Affected Party is applying that Mr. Milingo Lungu of Messrs Lungu Simwanza and Company be appointed as Liquidator.

With respect to costs it was submitted that the 1st Affected party had agreed to pay the Applicant's costs for these proceedings. Counsel added that as stated at the last hearing of the matter on 7th August 2020, the Applicants, the Respondents and the 1st Affected Party were in agreement to this application and the proposals and to that effect, a consent Order signifying that agreement was executed between them.

In response the learned Counsel for the Applicant submitted that since the Proposed Scheme of Arrangement was approved by a majority of the Respondent's creditors, they had no objection to the 1st Affected Party's Application. Counsel re-echoed the 1st Affected Party's position on costs that the same be payable by the 1st Affected Party to the Applicants.

I have considered the evidence on record and submissions by counsel. It is clear in the case before me that the parties are in agreement with the application to Sanction an Approved Scheme of Arrangement and Reconstruction. This is further supported by the signed Consent Order which the Court has had sight of. In view of there being no objection to this Application and having been

persuaded by Counsel's submissions that the Approved Scheme of Arrangement and Reconstruction was agreed to by the creditors, I find that the Application succeeds. I accordingly grant the Order to Sanction the Approved Scheme of Arrangement and Reconstruction as applied by the 1st Affected Person and Order that costs of the proceedings are as per agreement of the parties in the Consent Order for costs.

Dated the 21st day of August, 2020



**M. CHITABO, SC
HIGH COURT JUDGE**

