

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG PROVINCIAL DIVISION, PRETORIA

CASE NO: 85549/2015

BEFORE HIS LORDSHIP MR JUSTICE PRINSLOO

ON THURSDAY, 19 NOVEMBER 2015

In the application between:

EAST METALS AG First Applicant

MASTERCROFT S.A.R.L Second Applicant

and

EVRAZ HIGHVELD STEEL AND VANADIUM LIMITED First Respondent
(IN BUSINESS RESCUE)
(Registration Number: 1960/001900/06)

PIERS MARSDEN N.O. Second Respondent

DANIEL TERBLANCHE N.O. Third Respondent
(in their representative capacities as the joint
business rescue practitioners of Evraz Highveld
Steel and Vanadium Limited in business rescue)

In re:

EAST METALS AG First Applicant

MASTERCROFT S.A.R.L Second Applicant

and

EVRAZ HIGHVELD STEEL AND VANADIUM LIMITED First Respondent
(IN BUSINESS RESCUE)
(Registration Number: 1960/001900/06)

PIERS MARSDEN N.O. Second Respondent

DANIEL TERBLANCHE N.O. (in their representative capacities as the joint business rescue practitioners of Evraz Highveld Steel and Vanadium Limited in business rescue)	Third Respondent
COMPANIES AND INTELLECTUAL PROPERTY COMMISSION	Fourth Respondent
THE CREDITORS OF THE FIRST RESPONDENT LISTED IN ANNEXURES "A" AND "B" TO THE NOTICE OF MOTION	Fifth Respondents
THE EMPLOYEES OF THE FIRST RESPONDENT	Sixth Respondents
NATIONAL UNION OF METALWORKERS OF SOUTH AFRICA	Seventh Respondent
SOLIDARITY UNION	Eighth Respondent
RMB SECURITIES PROPRIETARY LIMITED	Ninth Respondent
THE REMAINING SHAREHOLDERS OF THE FIRST RESPONDENT	Tenth Respondents
SOUTH AFRICAN REVENUE SERVICE	Eleventh Respondent
INTERNATIONAL RESOURCES PROJECT LIMITED	Twelfth Respondent

DRAFT ORDER

HAVING HEARD COUNSEL AND HAVING READ THE PAPERS, it is ordered that:

1. The applicants are granted leave to serve the application dated and issued under this case number on 21 October 2015 ["the main application"] and the urgent interdict application dated and issued under this case number on 26 October 2015 ["the urgent interdict application"] upon the fifth respondents (being the creditors of the first respondent) as follows:

- 1.1. By publication by the second and third respondents of a notice in the form annexed as "X" to this application upon the first respondent's website ["the notice"] within two days of this order;
 - 1.2. By the applicants emailing a copy of the notice to the known creditors by way of email where such email service can be effected;
 - 1.3. By publication of the notice and of a copy of the notice of motion of each application (without the founding affidavit and annexures) in the Witbank News (or such other local newspapers as circulating in the eMalahleni (Witbank) area) and in the Star newspaper.
2. The applicants are granted leave to serve the main application and the urgent interdict application upon the employees of the first respondent (being the sixth respondents) as follows:
- 2.1. By publication by the second and third respondents of a notice in the form annexed as "X" to this application upon the first respondent's website , within two days of this order;
 - 2.2. By the applicants emailing a copy of the notice to the known employees other than those belonging to the seventh and eighth respondents (the trade unions) by way of email where such email service can be effected;
 - 2.3. By the applicants affixing a copy of the notice together with the notice of motion in each application (without the founding affidavit and annexures) to such notice boards to which the employees of the first respondent have access or such other prominent place in their workplace to which they have access;

- 2.4. By service of the main application per sheriff upon the seventh and eighth respondents as the trade unions representing the employees;
 - 2.5. By publication of the notice and a copy of the notice of motion of each application (without the founding affidavit and annexures) in the Witbank News (or such other local newspapers as circulating in the eMalahleni (Witbank) area) and in the Star newspaper.
3. The applicants are granted leave to effect service of the main application and the urgent interdict application upon the remaining shareholders of the first respondent (the tenth respondent):
 - 3.1. By publication by the second and third respondents of a notice in the form annexed as "X" to this application upon the first respondent's website ["the notice"] within two days of this order;
 - 3.2. By the SENS announcements published by the second and third respondents on 22 October 2015 and which is annexed as "SA3" to the founding affidavit and "CC3" to the supplementary founding affidavit to this application;
 - 3.3. By publication of the notice and a copy of the notice of motion of each application (without the founding affidavit and annexures) in the Witbank News (or such other local newspapers as circulating in the eMalahleni (Witbank) area) and in the Star newspaper;

- 3.4. Insofar as is practically possible, by the transmission of the notice to the remaining shareholders through Computershare by the transfer secretaries.
4. Any further notices (not process) that may need to be delivered in any proceedings under this case number can be effected by way of the appropriate notification being published by the second and third respondent upon the website of the first respondent.
5. The second and third respondents are directed to render such assistance to the applicants as may be necessary to give effect to prayers 1 to 3 above and in respect of which the applicants are to pay the second and third respondents' reasonable costs for doing so, including:
 - 5.1. furnishing the applicants with three days of this order with the names of and corresponding email addresses of the creditors of the first respondent, to the extent that the second and third respondents have the information;
 - 5.2. furnishing the applicants with three days of this order with the names of and corresponding email addresses of the employees of the first respondent who do not belong to the seventh and eighth respondents, to the extent that the second and third respondents have the information;

6. Granting the fifth, sixth and tenth respondents fifteen days after the substituted service to oppose the main application.
7. Granting the fifth, sixth and tenth respondents five days after the substituted service to oppose the urgent interdict application
8. Directing that the costs of this application be costs in the main application.
9. The first, second and third respondents do not concede that the urgent interdict application is urgent.

"X"

NOTICE OF APPLICATIONS BY EAST METALS A.G. ("East Metals") AND MASTERCROFT S.A.R.L. ("Mastercroft") IN THE HIGH COURT OF SOUTH AFRICA, GAUTENG PROVINCIAL DIVISION, PRETORIA UNDER CASE NUMBER 85549/2015 ["the Application"], SEEKING RELIEF RELATING TO THE BUSINESS RESCUE PROCESS OF EVRAZ HIGHVELD STEEL AND VANADIUM LIMITED (IN BUSINESS RESCUE) (Registration Number 1960/001900/08) ("the Company")

1. This is an important notice of legal proceedings that affects you directly.
2. You are cited as a respondent in these two court applications as you are an affected person, either as a creditor, employee or shareholder of the Company, and the relief that is sought, if granted, will or may affect you.
3. This notice is furnished to you in lieu of service of the applications on you, as ordered by the High Court of South Africa on 17 November 2015, under this case number. This is because the applications are too voluminous and the affected parties too many to effect individual service of the entire applications on each of you. Copies of the notice of motion to each application are attached. The notice of motion in the main application is annexed as "A" and the notice of motion in the urgent interdict application is annexed as "B"

Please read this notice and the notices of motion carefully.

4. You are entitled to oppose either or both the applications but must do so by delivering notice of intention to oppose within:
 - 4.1 fifteen days of the publication of this order in respect of the main application;
 - 4.2 five days of the publication of this order in respect of the urgent interdict application.

If necessary, please consult your attorneys or other professional advisors.

5. In the main application East Metals as a major creditor and Mastercroft as the majority shareholder applies to the High Court of South Africa, Gauteng Local Division, Pretoria, under case number 85549/2015 for the following relief:
 - 5.1 Granting East Metals and Mastercroft leave in terms of section 133(1) of the Companies Act, 2008 to launch the proceedings insofar as may be necessary;
 - 5.2 Declaring that the vote that took place at the meeting of 13 October 2015 at which the business rescue plan for the Company was adopted is invalid and is to be set aside;
 - 5.3 Declaring that the business rescue plan of the Company is invalid;

- 5.4 Declaring that the agreement on remuneration of the business rescue practitioners of the Company as provided in paragraph 14 of the Business rescue plan is invalid and is to be set aside;
- 5.5 Declaring that the cost of the Main Application be costs of the business rescue proceedings of the Company, unless there is opposition.
6. The main grounds upon which East Metals and Mastercroft's seek the relief are that:
 - 6.1 the business rescue practitioners permitted a large body of creditors to vote on the business rescue plan on 13 October 2015 without disclosing those creditors in the plan and without disclosing that those creditors were present at the meeting on 13 October 2015 and would exercise votes on the plan;
 - 6.2 the business rescue plan did not contain all the information reasonably required to enable affected persons to decide whether to accept or reject the plan, including the inclusion of an additional R1,4 billion alleged creditors and which would have a major effect on any dividend payable in business rescue or upon liquidation;
 - 6.3 as a result the affected persons were unaware of the inclusion in the votes of creditors of a large body of persons who had not been disclosed before or at the statutory meeting on 13 October 2015 and which disclosure was made by the business rescue practitioners only after the vote had already taken place and only after enquiry;
 - 6.4 in any event, the plan affects the rights of shareholders but no vote of shareholders was conducted as required in terms of the Companies Act.
7. In the urgent interdict application East Metals as a major creditor and Mastercroft as the majority shareholder seeks that the implementation of the business rescue plan be put on hold pending the determination of the main application.
8. The Company and the business rescue practitioners are opposing both applications.
9. Electronic and complete copies of the applications including the supporting affidavits and annexes are available for download on the Company's website.
10. Complete copies of the application are also available from the attorneys for East Metals and Mastercroft at the contact details below free of charge.
11. Should you have any queries, please contact us using the contact information provided below:

Baker & McKenzie
Berna Malan

Tel: +27 11 911 4300

Email: service.johannesburg@bakermckenzie.com

“A”

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG PROVINCIAL DIVISION, PRETORIA

CASE NO: 85549/2015

In the matter between:

EAST METALS AG
MASTERCROFT S.A.R.L

First Applicant

Second Applicant

and

EVRAZ HIGHVELD STEEL AND VANADIUM LIMITED
(IN BUSINESS RESCUE)
(Registration Number: 1960/001900/06)

First Respondent

PIERS MARSDEN N.O.

Second Respondent

DANIEL TERBLANCHE N.O.
(in their representative capacities as the joint
business rescue practitioners of Evraz Highveld
Steel and Vanadium Limited in business rescue)

Third Respondent

COMPANIES AND INTELLECTUAL
PROPERTY COMMISSION

Fourth Respondent

THE CREDITORS OF THE FIRST RESPONDENT
LISTED IN ANNEUXRES “A” AND “B” TO THE
NOTICE OF MOTION

Fifth Respondents

THE EMPLOYEES OF THE FIRST RESPONDENT

Sixth Respondents

NATIONAL UNION OF METALWORKERS OF
SOUTH AFRICA

Seventh Respondent

SOLIDARITY UNION	Eighth Respondent
RMB SECURITIES	Ninth Respondent
THE REMAINING SHAREHOLDERS OF THE FIRST RESPONDENT	Tenth Respondents
SOUTH AFRICAN REVENUE SERVICE	Eleventh Respondent
INTERNATIONAL RESOURCES PROJECT LIMITED	Twelfth Respondent

NOTICE OF MOTION

BE PLEASED TO TAKE NOTICE that the applicants will make application to the above Honourable Court for an order:

1. Granting the applicants leave in terms of section 133(1) of the Companies Act, 2008 to launch these proceedings, insofar as is necessary.
- 2 Declaring that business rescue plan annexed as “FA5” to the founding affidavit, and as may have been amended in respect of the first respondent [“the business rescue plan”], is invalid;
- 3 Declaring that the vote that took place at the meeting on 13 October 2015 at which the business rescue plan was adopted is invalid and set aside.
- 4 Declaring that the agreement on the remuneration of the second and third respondents as business rescue practitioners as provided for in paragraph 14 of the business rescue plan is invalid and set aside.

- 5 Directing that the costs of these proceedings be costs of the business rescue proceedings of the first respondent.
- 6 Directing that any other respondents who oppose these proceedings pay the costs, jointly and severally with the first respondent.
- 7 Granting such further and/or alternative relief as may be appropriate

TAKE NOTICE FURTHER that the affidavit of TANIA MOSTERT with annexes will be used in support thereof.

TAKE NOTICE FURTHER that if you, the respondents, intend opposing this application, you are required to:

- a) notify the applicants' attorney of such intention to oppose within fifteen (15) days of the service of this application;
- b) to appoint in such notification an address referred to in Rule 6(5)(b) at which you will accept notice and service of all documents in these proceedings; and
- c) within fifteen (15) days after you so give notice of your intention to oppose this application, to file answering affidavits, if any.

IF NO SUCH NOTICE OF INTENTION TO OPPOSE BE GIVEN, the application will be made on the ____ day of _____ 2015 at _____ or so soon thereafter as Counsel may be heard.

DATED AT PRETORIA ON THIS _____ DAY OF NOVEMBER 2015

BAKER & MCKENZIE ATTORNEYS
Applicants' Attorneys
1 Commerce Square
39 Rivonia Road
Sandhurst, Johannesburg
(011) 911-4300
Ref: G Rudolph/CO/BM
c/o **Adams & Adams**
Lynnwood Bridge
4 Daventry Street
Lynnwood Manor
PRETORIA
Tel: 012 432 6000
Fax: 012 432 6599
Ref: R Nienaber/A Jordaan/LT2788

TO:

THE REGISTRAR
PRETORIA

AND TO:

EVRAZ HIGHVELD STEEL AND VANADIUM LIMITED
(IN BUSINESS RESCUE)
First Respondent
Old Pretoria Road
Portion 93 of the Farm Schoongezicht 308 JS
eMalabeni (Witbank)
[Registered office and principal place of business]

SERVICE PER SHERIFF

AND TO:

PIERS MARSDEN N.O.
Second Respondent
First Floor, One on Ninth
Corner Glenhove and Ninth Streets
Melrose Estate
Johannesburg

SERVICE PER SHERIFF

AND TO:

DANIEL TERBLANCE N.O.
Third Respondent

Mazars House
5 St David's Place
Parktown
Johannesburg

SERVICE PER SHERIFF

AND TO:

COMPANIES AND INTELLECTUAL
PROPERTY COMMISSION OF SOUTH AFRICA
Fourth Respondent
Entfufukweni
DTI Campus
77 Meintjies Street
Sunnyside
Pretoria

SERVICE PER SHERIFF

AND TO:

CREDITORS OF:
EVRAZ HIGHVELD STEEL AND VANADIUM LIMITED
Fifth Respondent

AND TO:

THE EMPLOYEES OF:
EVRAZ HIGHVELD STEEL AND VANADIUM LIMITED
Sixth Respondent

AND TO:

NATIONAL UNION OF METALWORKERS
OF SOUTH AFRICA
Seventh Respondent
153 Lillian Ngoyi Street
Cnr Gerard Sekoto Street
Newtown
JOHANNESBURG

SERVICE PER SHERIFF

AND TO:

SOLIDARITY UNION
Eighth Respondent
Cnr DF Malan Drive and Eendracht Street

Kloofsig
PRETORIA

SERVICE PER SHERIFF

AND TO:

RMB SECURITIES PROPRIETARY LIMITED
Ninth Respondent
1 Merchant Place
Cnr Fredman Drive and Rivonia Road
Sandton
JOHANNESBURG

SERVICE PER SHERIFF

AND TO:

REMAINING SHAREHOLDERS
Tenth Respondent

AND TO:

SOUTH AFRICAN REVENUE SERVICE
Eleventh Respondent
Megawatt Park
2 Maxwell Drive
Sunninghill
Johannesburg

SERVICE PER SHERIFF

AND TO:

INTERNATIONAL RESOURCES PROJECT LIMITED
Twelfth Respondent
c/o EDWARD NATHAN SONNENBERGS
150 West Street
Sandown
Sandton
REF: Mr T Steyn

SERVICE BY SHERIFF

"B"

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG PROVINCIAL DIVISION, PRETORIA

CASE NO: 85549/2015

In the matter between:

EAST METALS AG First Applicant

MASTERCROFT S.A.R.L. Second Applicant

and

EVRAZ HIGHVELD STEEL AND VANADIUM LIMITED First Respondent
(IN BUSINESS RESCUE)
(Registration Number: 1960/001900/06)

PIERS MARSDEN N.O. Second Respondent

DANIEL TERBLANCHE N.O. Third Respondent
(in their representative capacities as the joint
business rescue practitioners of Evraz Highveld
Steel and Vanadium Limited in business rescue)

COMPANIES AND INTELLECTUAL Fourth Respondent
PROPERTY COMMISSION

THE CREDITORS OF THE FIRST RESPONDENT Fifth Respondents
LISTED IN ANNEUXRES "A" AND "B" TO THE
NOTICE OF MOTION

THE EMPLOYEES OF THE FIRST RESPONDENT Sixth Respondents

NATIONAL UNION OF METALWORKERS OF Seventh Respondent
SOUTH AFRICA

SOLIDARITY UNION Eighth Respondent

RMB SECURITIES Ninth Respondent

THE REMAINING SHAREHOLDERS OF THE Tenth Respondents
FIRST RESPONDENT

SOUTH AFRICAN REVENUE SERVICE

Eleventh Respondent

INTERNATIONAL RESOURCES PROJECT LIMITED

Twelfth Respondent

NOTICE OF MOTION

BE PLEASED TO TAKE NOTICE THAT application will be made to the above Honourable Court for an order:

2. Directing that this matter be heard urgently and condoning the applicants' failure to comply with the forms, periods and other provisions of the Uniform Rules.
3. Granting the applicants leave in terms of section 133(1) of the Companies Act, 2008 to launch these proceedings, insofar as is necessary.
- 8 *Pending the final determination of the main application launched under this case number*, interdicting and restraining the first to third respondents from implementing the business rescue plan in respect of the first respondent annexed as "F5" to the founding affidavit in the main application and as adopted at the meeting on 13 October 2015.
- 9 Directing that the costs of this application be reserved for determination in the main application, save that any respondent who opposes this application pay the costs of the application.
- 10 Granting such further and/or alternative relief as may be appropriate

TAKE NOTICE FURTHER that the affidavit of TANIA MOSTERT with annexes will

be used in support thereof.

TAKE NOTICE FURTHER that if you, the respondents, intend opposing this application, you are required to:

- a) notify the applicants' attorneys in writing of your intention within five (5) days and in such notice to appoint an address referred to in Rule 6(5)(b) at which you will accept notice and service of all documents in these proceedings; and
- b) file your answering affidavit, if any, within a further ten (10) days of you giving such notice of intention to oppose.

KINDLY PLACE THIS MATTER ON THE ROLL ACCORDINGLY

DATED AT PRETORIA ON THIS DAY OF NOVEMBER 2015

BAKER & MCKENZIE ATTORNEYS
Applicants' Attorneys
1 Commerce Square
39 Rivonia Road
Sandhurst, Johannesburg
(011) 911-4300
Ref: G Rudolph/CO/BM
c/o Adams & Adams
Lynnwood Bridge
4 Daventry Street
Lynnwood Manor
PRETORIA
Tel: 012 432 6000
Fax: 012 432 6599
Ref: R Nienaber/A Jordaan/LT2788

TO:

THE REGISTRAR
PRETORIA

AND TO:

EVRAZ HIGHVELD STEEL AND VANADIUM LIMITED
(IN BUSINESS RESCUE)
First Respondent
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eMalableni (Witbank)
[Registered office and principal place of business]

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AND TO:

PIERS MARSDEN N.O.
Second Respondent
First Floor, One on Ninth
Corner Glenhove and Ninth Streets
Melrose Estate
Johannesburg

SERVICE PER SHERIFF

AND TO:

DANIEL TERBLANCE N.O.
Third Respondent
Mazars House
5 St David's Place
Parktown
Johannesburg

SERVICE PER SHERIFF

AND TO:

COMPANIES AND INTELLECTUAL
PROPERTY COMMISSION OF SOUTH AFRICA
Fourth Respondent
Entfutfukweni
DTI Campus
77 Meintjies Street
Sunnyside
Pretoria

SERVICE PER SHERIFF

AND TO:

CREDITORS OF:
EVRAZ HIGHVELD STEEL AND VANADIUM LIMITED
Fifth Respondent

AND TO:

THE EMPLOYEES OF:
EVRAZ HIGHVELD STEEL AND VANADIUM LIMITED
Sixth Respondent

AND TO:

NATIONAL UNION OF METALWORKERS
OF SOUTH AFRICA
Seventh Respondent
153 Lillian Ngoyi Street
Cnr Gerard Sekoto Street
Newtown
JOHANNESBURG

SERVICE PER SHERIFF

AND TO:

SOLIDARITY UNION
Eighth Respondent
Cnr DF Malan Drive and Eendracht Street
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PRETORIA

SERVICE PER SHERIFF

AND TO:

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Ninth Respondent
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SERVICE PER SHERIFF

AND TO:

REMAINING SHAREHOLDERS
Tenth Respondent

AND TO:

SOUTH AFRICAN REVENUE SERVICE
Eleventh Respondent
Megawatt Park
2 Maxwell Drive
Sunninghill
Johannesburg

SERVICE PER SHERIFF

AND TO:

INTERNATIONAL RESOURCES PROJECT LIMITED
Twelfth Respondent
c/o EDWARD NATHAN SONNENBERGS
150 West Street
Sandown
Sandton
REF: Mr T Steyn

SERVICE BY SHERIFF