



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 25 May 2021

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Ferrostaal GmbH and Another v Transnet Soc Ltd t/a Transnet National Ports Authority and Another (1194/2019) [2021] ZASCA 62 (25 May 2021)

The Supreme Court of Appeal (SCA) today dismissed an appeal brought by Ferrostaal GmbH, and another appellant, against Transnet SOC Ltd, trading as Transnet National Ports Authority, (Transnet) and another respondent. The appeal was dismissed with costs, which included the costs of two counsel. The SCA thereby upheld the decision of the Western Cape Division of the High Court, Cape Town (the high court).

The central issue for determination by the SCA was whether the high court was correct in refusing to set aside Transnet's vote against the adoption of the revised business rescue plan (BRP) on the basis that its vote was not inappropriate, considering all the circumstances.

On 2 December 2016, an order placing Ferromarine Africa (Pty) Ltd (FMA), the second respondent, under business rescue was granted. FMA's shareholders were Ferrostaal GmbH, the first appellant, and Atlantis Marine Projects (Pty) Ltd, the second appellant. On 7 December 2016, Mr Gore, the duly appointed business rescue practitioner, suspended FMA's obligation to pay rental to Transnet. The practitioner published the first BRP on 28 February 2017. Transnet, which happened to be FMA's only independent creditor, did not support that proposed BRP. On 29 July 2019, the business rescue practitioner published a final revised BRP. On 31 July 2019, Transnet voted against the adoption of the revised BRP at a meeting of creditors and holders of voting rights. Averring that Transnet's rejection of the BRP was inappropriate, the appellants, within the contemplation of s 153(1)(b)(i)(bb) of the Companies Act 71 of 2008 (the Act), approached the high court on an urgent basis, seeking an order setting aside Transnet's vote against the adoption of the revised BRP.

The SCA held that it was clear from the well-reasoned and comprehensive judgment of the high court that in exercising its value judgment to determine whether the revised BRP fell to be set aside on the basis of being inappropriate, it had carefully taken the provisions of s 153(7)(a) to (c) of the Act, and all the circumstances of this case, into account. The SCA found that there could be no quarrel with a conclusion that the high court's discretion was properly exercised, regardless of whether it constituted a true or loose discretion. It was therefore not open to the SCA to tamper with its decision.

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