

Parliament monitoring group into SOE:

In the matter between:

SA Express (PTY) LTD

And

Ziegler South Africa (Pty) Ltd

Professional liquidators

Department of Public Enterprise (Shareholder)

CREDITORS & EMPLOYEES OF SA Express

Request: Intervention into SA Express

This document is to inform you of our plight as SA EXPRESS employees (hereafter to be referred to as SAX). Attached you will find emails to and from the DPE from the chosen leadership.

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Introduction

SA Express placed under provisional liquidation by order of court

[1] On 29 April 2020, judgment was handed down in an application brought by the Business Rescue Practitioners (BRPs) (applicants) of South African Express Airways SOC Limited (SA Express) (first respondent), whereby Daniel Terblanche and Phahlani Mkhobo, acting in their capacities as BRPs of SA Express, sought relief on an urgent basis seeking an order to discontinue the business rescue proceedings and to have SA Express placed in provisional liquidation.

[2] On 6 February 2020, SA Express was placed in business rescue by order of court, at the instance of the applicant creditor Ziegler South Africa (Pty) Ltd, and the BRPs of SA Express were appointed. After having taken office, the BRPs' appointment was ratified / endorsed at meetings of creditors and affected persons. The BRPs then approached the sole shareholder (being the government of the Republic) in an attempt to secure post commencement finance, however this work was futile and there was nothing forthcoming in this regard (According to Business rescue practitioner). As a result, the BRPs approached the commercial banks and other development finance institutions for finance; however this proved to be yet another avenue which yielded no return. The BRPs were therefore forced to continue with the business rescue of SA Express, albeit with no funding available. As would be expected, expenses and debt continued to escalate throughout the process, and owing to the fact that there were no available funds to pay for the insurance and salaries of employees, aircrafts were ultimately grounded from 17 March 2020 and operations effectively ceased. The BRPs previously listed the affected persons of SA Express to be in the range of over 900. However, there was no opposition at the time that the BRPs brought the application. This was a cause of concern for the court, which then extensively considered the issue of service of the court process on the affected persons in light of the degree of urgency under which the application had been brought before the court.

[3] Counsel for the BRPs highlighted that it would be impossible to engage the services of the sheriff to effect service on 900 affected persons in this instance, considering the urgency of the matter and that service was therefore affected by way of email. Counsel also made averments regarding the service, albeit unsuccessful, on SA Express offices, where despite its efforts, the sheriff was denied access to the premises and therefore service could not be properly affected on SA Express. The respondents (including SA Express) and members of the sole shareholder were ultimately advised of the proceedings by way of email on 25 March 2020. (According to *Tobie Jordaan, Kylene Weyers and Jessica Osmond* [30 April 2020].)

[4] The court found in favour of the BRPs insofar as service was concerned, and held that although the BRPs had failed to meet the standards as set out in the court rules pertaining to service, they had ensured that the respondents were informed about the matter that was to be before the court on 29 April 2020, and found that the respondents had simply chosen not to participate. Furthermore, having consideration of the fact that the order sought before the court was that of a provisional order, the respondents would still have an opportunity to participate in the proceedings going forward should they wish to do so. Counsel for the BRPs went on to explain that the applicants had no alternative but to bring this application in terms of section 141 (2)(a) of the Companies Act 71 of 2008 (Act) due to futile attempts to raise any form of post commencement finance, coupled with continuously escalating expenses.

[5] The BRPs claimed that they were left with no alternative other than to have business rescue proceedings discontinued and to have SA Express placed in liquidation.

[6] (According to *Tobie Jordaan, Kylene Weyers and Jessica Osmond* [30 April 2020]) “ The purpose of the business rescue process was to allow breathing space and provide aid, by way of process and mechanisms, to a business facing financial distress. Business rescue is defined in section 128(1)(b) of the Act as

“proceedings to facilitate the rehabilitation of a company that is financially distressed”. In order to embark on, and continue the business rescue process, there must also be a reasonable prospect of rescue. A business under business rescue commonly continues to trade while afforded various procedural and substantive protections and advantages by the provisions as set out in Chapter 6 of the Act. Therefore, having regard to the fact that SA Express has ceased operations (in the sense that it has grounded its aircraft when its business is flying), the court held that due to the various factors brought before the court (including the lack of post commencement finance and the ceasing of operations), SA Express had no real prospects of rescue, and business rescue was bound to fail. The court acceded to the fact that the applicants were left with no other alternative other than to bring the application.

[7] The court granted the order in favour of the applicants, whereby it condoned the defective service of the applicants; declared the business rescue proceedings to be discontinued in terms of section 141(2)(a) of the Act; and placed SA Express under provisional winding up. The court called upon all persons/parties with a legitimate interest to put forward reasons why such provisional order should not be made final on 9 June 2020 (the return date). We will write a follow up article subsequent to the proceedings on 9 June 2020.

”

[8] On the 09 June 2020, court postponed the case to the 9th of September 2020.

Consultation

- (Reference to attached emails) Few emails were forwarded to DPE and workers representatives but nothing positive came out.

Reason for asking committee intervention

1. We mandated our representatives to negotiate for March and April salaries that were not paid. Previously to that, January and February salaries that were paid to employees but fraudulent payslips forwarded to employees. UIF, MEDICAL AID and SARS were not paid on those months but payslips reflected payment and deduction of the mentioned credits.
2. Furthermore a mandate was given to nominated 'leadership' for the same relief as our sister company SAA. That being salaries, overtime, leave days and retrenchment packages owed to be offered to the employees if and when the company does not find a suitable buyer.
3. We do understand the plight that the whole country is facing right now. We ask committee to look into our situations with no medical aids, no salaries, and delayed TERS payment from UIF.
4. The strife that we are facing is beyond what any breadwinner can face. We cannot claim for any relief because by law we are still provisionally employed, at the same time we do not enjoy any benefits of an employed man's status simply because we cannot work nor can we get remunerated.
5. There has been alleged promises from the DPE to our 'leadership'. Our request is that this is looked into and afforded a reasonable debate and chance.
6. Also note that the Zondo commission mentioned names of previous CEO's and EXCO. This all has nothing and far reaching from the layman like my colleagues and myself.

This is a desperate cry for help and we hope to get a way forward in this regard.

In addition:

- During the process of SA Express business rescue, we have never offered an opportunity to participate in the process according to Chapter

6 of the constitution empowers employees to participate in business rescue.

- Section 144 gives employee/s the right to be formally consulted and it is important that a practitioner does so, failing which, the Act is transgressed and the plan can be annulled.
- Section 148 requires the practitioner to officially meet employees within ten working days of being appointed, and thereafter to consult, listen to their concerns and find common ground. [We meet with practitioner on the (Date to be confirmed) for briefing. From then we have never had an opportunity to participate further, rather than being updated about our salaries.

We therefore request committee to intervene into SA Express provisional liquidation and put it back into Business rescue process in order to be given an opportunity to participate in Business rescue process.

Employee/s rights:

- (i) Notice of each court proceeding, decision, meeting or other relevant event concerning the business rescue proceedings and such notice must be given to us at workplace;
- (ii) We want to participate in any court proceedings arising during the business rescue proceedings;
- (iii) We want to be consulted by the practitioner during the development of the business rescue plan and afforded an opportunity to review the plan and prepare submissions;
- (iv) We want to vote with the creditors on a motion to approve the business rescue plan; and
- (v) If the business rescue plan is rejected, propose an alternative plan or present an offer to acquire the interests of any or all of the other creditors;

Furthermore, clarity needs to be provided;

- (i) If it happens that company get into final liquidation, what would happen to Cases that was brought forward to Zondo Commission for mismanagement of funds in the entity.
- (ii) SARS matter, allegations against company that they failed to comply with SARS.
- (iii) The position of shareholder (DPE), it must be clearly articulated to SA Express employees and South Africans at large. In this regards SA Express that is own by government is bankrupt according to BRP.
- (iv) Last financial report, DPE should provide reason of why SA Express executive failed to provide last year audited financial report. Further investigation needs to be done before final liquidation to SA Express.
- (v) Workers being engaged with any development in the matter of company equity partner/s.

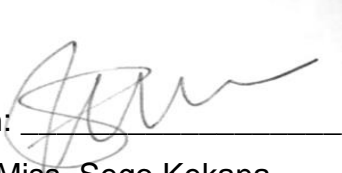
It will be unfair justice to us and our co-workers if SA Express get into final liquidation while it is still have more cases hanging. We therefore request justice by you intervening and put SA Express back to Business rescue process and being saved from liquidation.

Reference

*Tobie Jordaan, Kylene Weyers and Jessica Osmond [30 April 2020]
BUSINESS RESCUE, RESTRUCTURING & INSOLVENCY ALERT, CDH,
access on internet on the [28/06/2020]*

Conclusion


We declare that information provided in this letter is true and accurate; we further request committee to hear our appeal.

Sign: 

Miss. Sego Kekana

SA Express employee


27/07/2020

Sign: 

Miss. Lebogang Mokgepa

SA Express Employee

27/07/2020

Sign: 

Mr. Tiego Phillimon Tjale

SA Express employee


27/07/2020

Sign: 

Mr. Mpho Mothibe

SA Express employee

27/07/2020

Sign: 

Mpho Mohlala

SA Express employee

27/07/2020