

PCmin 27 March 2013

REPORT BY THE JOINT PROVISIONAL LIQUIDATORS RELATING TO THE PAMODZI GROUP OF COMPANIES TO

THE MINERAL RESOURCES PORTFOLIO COMMITTEE

27 March 2013

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SUMMARY OF RECENT EVENTS

- Criminal charges against Aurora directors, management and legal representative – now with Serious Economic Crimes Unit of SAPS
- Successfully disposed of Pamodzi Orkney assets
- Sec 89 payments to PGO workers made
- Successfully disposed of Pamodzi East Rand remaining tangible assets
- Currently focusing on litigation

DISPOSAL OF PAMODZI ORKNEY

ASSETS

- Assets sold to CAPM for R150 million
- First payment of R65,7 million (ex VAT) received during Dec 2012
- All workers received Sec 98 preferrent payment
- Final payment of R 65,7 million (ex VAT) received during Feb 2013
- In final stages to transfer the mining rights to CAPM (liaison with DMR)
- Anticipated final order June 2013

DISPOSAL OF PAMODZI EAST RAND

ASSETS

- Certain assets sold to Gold One/Goliath during April 2012 for R 70 million
- On signature Gold One/Goliath took occupation of the surface assets, general offices and mining data
- DMR approval of Prospecting Rights on the assets sold to Gold One/Goliath on-going
- Transfer and conveyance of surface assets on-going
- On-going consultation with DMR on the rehabilitation process
- Final liquidation order anticipated June 2013.

MASTER'S ENQUIRY - SEC 381 OF THE COMPANIES ACT

- Master re-opened their Sec 381 enquiry based on evidence and testimony of the Sec 417/418 enquiry
- Behaviour of erstwhile liquidators further investigated subsequent to their removal
- Current liquidators cannot comment any further as the matter is *sub judice* - we are not privy to the investigation and intended Master's action

ENQUIRY IN TERMS OF SEC 417/418

OF THE COMPANIES ACT

- Enquiry will be completed within the next month
- During the enquiry, evidence of some 34 witnesses were heard
- The Commissioners detailed report is in final draft and will be released after completion of the enquiry
- Purpose of the report is to make certain recommendations to the liquidators, Master and SAPS to take further action based on testimony and interrogation of witnesses
- See attached interim Commissioners report

CURRENT LITIGATION

➤ **Sec 424 summonses issued against all directors of Aurora,**

- In the Sec 424 applications, we made a case that the directors acted recklessly with the intend to defraud its creditors,
- All applications defended
- Cases to be argued in August 2013

➤ **Common Law action,**

- Action instituted for damages suffered by the estates pursuant to asset stripping by Aurora and scrap dealers acting in concert with each other,
- Particulars of claim drafted and with counsel for vetting
- Anticipated trial date in 2 years

➤ **Applications i.t.o. Sec 26 to 31 of the Insolvency Act**

- Applications relating to preference of one creditor above another
- All applications opposed
- Anticipated trial date July 2013

WAY FORWARD

- We are currently investigating the merits of possible enquiry into the behavior of the Pamodzi directors – strong indication of Sec 424 liability
- Focussing on the on-going litigation
- Successful litigation will be for the free residue account and ensure financial benefit to the many destitute workers
- Although it will take time as the statutory process are outside the control of the JPLs, it appears likely that Pamodzi employees will receive some form of financial benefit
- Final liquidation of both Orkney and PGER (anticipated during June 2013) will ensure closure

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23 March 2013

THE MASTER OF THE NORTH GAUTENG HIGH COURT, PRETORIA

FOR ATTENTION: MS CHRISTENE ROSSOUW

**PAMODZI GOLD EAST RAND (PTY) LTD (IN PROVISIONAL LIQUIDATION)
AND 6 OTHER COMPANIES. PROGRESS REPORT**

Dear Ms Rossouw

As per your request, I am pleased to provide a progress report in the above matter.

1. On 29 June 2011, the Master ordered an enquiry into the affairs of the abovementioned entities.
2. In compliance with the order, several dates were determined and various witnesses were summonsed to appear to testify.

3. Thus far, the following witnesses were summoned to the enquiry and interrogated:

3.1 Management of Aurora and witnesses recorded in terms of the M Net order:-

3.1.1 Khulubuse Zuma;

3.1.2 Zondwa Mandela;

3.1.3 Thulani Nugubane;

3.1.4 Sulliman Bhana;

3.1.5 Fazel Bhana;

3.1.6 Yaseen Theba;

3.1.7 Ahmed Amod; and

3.1.8 Michael Hulley;

3.2 The following witnesses were summoned but failed to appear before the enquiry:-

3.2.1 Bashir Moosa;

3.2.2 Anthony Chammas;

3.2.3 Enver Dawood/ Motala

3.3 The following witnesses were summoned to the enquiry and interrogated (non-management of Aurora):-

3.3.1 Herbert Trouw;

3.3.2 Ian Cousins;

3.3.3 Douw Van Niekerk;

3.3.4 Johannes Van Eeden;

3.3.5 Gideon Du Plessis;

3.3.6 Louis Lambsley;

3.3.7 Brett Du Toit;

3.3.8 Keith Hart;

3.3.9 Callie Smit;

3.3.10 Mariska Vosloo;

3.3.11 Louis Bezuidenhout;

3.3.12 Wille Coetzer;

3.3.13 P Kruger;

3.3.14 G Murphy;

3.3.15 G Ellis;

3.3.16 C Bruyns;

3.3.17 J Lubbe;

3.3.18 M Furman;

3.3.19 C Foster;

3.3.20 P Herbst;

3.3.21 H Kassel;

3.3.22 C Grobbelaar; and

3.3.23 E Brits.

4. In summary, it has been established that the JPL identified and appointed Aurora Empowerment Systems (Pty) Ltd ("Aurora") during July 2009, as the preferred party to acquire the assets of Pamodzi Gold Orkney, and during October 2009, as the preferred party to acquire the assets of the East Rand operations.
5. The appointment of Aurora as the preferred bidder occurred pursuant to the latter's bid for the acquisition of the mines as contained in two bid documents, dated July 2009 and October 2009 respectively.
6. According to these documents :-
 - 6.1 The directors of Aurora were:-
 - 6.1.1 Khulubuse Zuma (Chairman);
 - 6.1.2 Michael Hulley (Non Executive);
 - 6.1.3 Zondwa Mandela (Managing Director);

6.1.4 Sheshile Ngubane (Executive Director); and

6.1.5 Dato Raja Zainal Alam Shah (Executive Director);

6.2 Aurora had strong links to the Gulf and Far East and was positioning itself as a major player in the commodities market;

6.3 Aurora was well capitalised to fund the acquisition of the mines at Orkney for R 215 million and the mines at Grootvlei for R 390 million;

6.4 Aurora could fund capital expansion programs in an amount of R 150 million at Orkney and R 200 million at Grootvlei;

6.5 Aurora intended to, and by implication could fund, social labour plans which included housing schemes, tertiary education subsidies, bursaries for dependants of employees and environmental rehabilitation programs; and

6.6 The acquisition of the mines would be structured either by way of a compromise offer to the creditors of the mines in terms of section 311 of the old Companies Act, or by the outright purchase of the mines.

7. Subsequently, various agreements were entered into between the JPL and Aurora titled Interim Contract and Mining Agreements ("ITCMA"), since the proposals seemed very favourable to the Joint Provisional Liquidators at the time.

8. In consequence of these agreements, Aurora was granted access to and possession of the mines situated at Orkney and Springs.
9. These agreements were concluded as a precursor to Aurora's intended acquisition of the mines and the payment of the purchase consideration in terms of the bid documents or offers, which would have occurred either in terms of a proposed compromise to the creditors of the estates in terms of section 311 of the Companies Act 1973 alternatively, and in the event of the compromise offer not being sanctioned by the creditors and the High Court, the outright purchase of the assets from the estates.
10. However, the acquisition of the mines and payment of the purchase consideration never materialised, resulting in the Joint Provisional Liquidators cancelling the agreements during 2011.
11. During the period when Aurora was in control of the mines, the mines were stripped of its assets and despite the undertakings of Aurora, employees and creditors were not paid, gold produced remained unaccounted for, water was polluted and several other alleged irregularities occurred.
12. The bulk of the testimony and the focus of those leading the enquiry thus far, has been the conduct of Aurora, its controllers and other parties during the duration of the period when Aurora were in control of the mines.
13. As a direct result, I have been reliably informed, actions have been instituted to recover funds from various parties.
14. Claims and potential claims have been identified.

15. Albeit that the enquiry has been a monumental task, as can be gleaned purely from considering the amount of witnesses who has testified, the intricacies of this particular matter deserves further scrutiny.
16. The enquiry has established that there is reason to believe that Aurora was never well capitalised to fund the acquisition of the mines as purported, perhaps even never capitalised at all and possibly insolvent at all material times. This issue, if true, manifested itself prior to Aurora procuring control of the mines.
17. Without letting the cat out of the bag, I can say that as yet, one of the directors has not testified. Attempts thus far to locate him has proven fruitless. Perhaps one should add that several entities renowned for their ability to trace persons have been requested to assist, but without success.
18. However, there has been a recent development which at the very least, would support several suspicions or, at best, might even lead to the successful tracing of this "missing" director and the enquiry benefitting from his testimony.
19. This aspect is of utmost importance and cannot be ignored.
20. At this stage I do not wish to go into much detail, as a result of the sensitivity of the issue at hand and the current position in which the enquiry finds itself, but you will recall that it was mentioned from the outset that it is imperative that this particular issue be canvassed in depth.
21. More than a year ago, I, per e-mail, implored on all parties not to close the enquiry before this issue had been dealt with. To a large extent, the reason why the enquiry has not been finalised, is

because thus far, attempts to locate a particular witness, has been unsuccessful.

22. Equally important is that this aspect be visited and ventilated properly, since the enquiry would not be doing its duty if it omits to do so. I am reminded of the words of one of the liquidators, to the extent that no stone should be left unturned in attempting to ascertain what caused this tragedy.
23. Simply saying that the following was not done because a particular person or persons could not be located, would not suffice to my mind and would definitely not be acceptable to the thousands of employees who have lost their jobs and or who are still owed a considerable amount for services rendered.
24. I may add that this aspect which I submit still justifies scrutiny, should not take more than a day or two, to ventilate. Having come this far, and despite the delay, I consider it imperative to proceed.
25. I am convinced that apart from an unforeseen delay in the availability of the two or perhaps three witnesses, the enquiry can be concluded in a month or so.
26. A lot of work has been done on the report and the issues which have been canvassed thus far. However, I have not been ordered to provide a piecemeal report or to file an interim report, which is why the report in its current form is not annexed.
27. To do so at this stage might jeopardise the final product. In fact, the outstanding issue will affect the remainder of the report to a large extent and would undoubtedly have a bearing on the conclusion.

28. The reason why this is mentioned, is to demonstrate to you that despite the fact that the record already runs to approximately 41 000 pages, a final report could probably be provided within less than a month of the final witness testifying.

29. If any additional facts are required, please contact me immediately.

30. With your consent, the attorney on behalf of the liquidators and I will during this coming week, identify dates on which the witnesses are to testify and will proceed to summons them as soon as possible.

Regards,

Wayne W Gibbs

(Read but not signed)

