

EISENMANN SOUTH AFRICA (PTY) LTD (IN LIQUIDATION)

MASTER'S REFERENCE NO T2829/19

LIQUIDATORS' REPORT IN RESPECT OF THE PROVISIONS IN TERMS OF SECTION 402 OF THE COMPANIES ACT, NO 61 OF 1973 TO BE SUBMITTED TO THE SECOND AND GENERAL MEETING OF CREDITORS AND MEMBERS, TO BE HELD BEFORE THE PRESIDING OFFICER, MAGISTRATE: KEMPTON PARK ON 19 APRIL 2022 AT 09:00

INTRODUCTION

The above company was placed in provisional liquidation on 15 October 2019 by an order granted in the High Court of South Africa, Gauteng Local Division, Pretoria under case number: 72992/19. The order was made final on 12 May 2020. Cloete Murray and Gladys Nkateko Ngobeni were appointed provisional liquidators by the Master of the High Court, Pretoria on 29 October 2019. The first meeting of creditors was held on 31 August 2021 and the provisional appointees were confirmed on 2 November 2021.

REPORT

The company was incorporated under registration number 1999/002047/07.

Directors

Beck, Thomas Michael – ID Number: 610829 (German)
Wepler, Volkhard Ludwig – ID Number: 601229 (German)

Section 402 of the Companies Act, No 61 of 1973

Section 402(a) Issued Share Capital and Assets and Liabilities

Share Capital:

Authorised: 1000 Ordinary shares of R1 each
Issued: 1000 Ordinary shares of R1 each

Shareholder:

Eisenmann Beteiligungen GmbH 100%

		ASSETS	LIABILITIES
Movable Assets - Unencumbered	1	52 000	
Cash and cash equivalents	2	23 400 000	
Debtors collected to date	3	620 200	
Claims ito Section 29, 30 and 31	4	24 600 000	
Claims ito Prepayment to Sub Contractors	4	17 800 000	
Concurrent Creditors			
~ Related parties	5		7 462 000
~ Unrelated parties	6		85 577 000
Shortfall before Section 89 costs			-26 566 800
		R66 472 200	R66 472 200

Notes

1. Containers and office equipment.
2. Funds collected from the bank account of the company.
3. Debtors collected to date. The company has a claim of circa R96 mil against the holding company, but given the financial position of the holding company, it is doubtful that a recovery on these funds will be made partially or at all. See more on this below.
4. The section 417 enquiry, to which we will refer to in more detail below, produced information which indicates that there were payments made to a specific sub-contractor in preference of all the other suppliers/creditors. The legal advice obtained by the liquidators confirmed that the payment is *prima facie* impeachable and there are good prospects of a recovery in respect of these amounts. The same applies to the advance payment made to a sub-contractor which was set-off unilaterally by the sub-contractor after the date of liquidation.
5. Claim from the holding company in Germany.
6. A number of claims were proved at the first meeting of creditors. These claims have been investigated in terms of Section 45(2) of the Insolvency Act. The liquidators will take steps in terms of Section 45(3) where it is appropriate to do so.

Documents considered in the drafting of this report:

- a. Signed Annual Financial Statements for the period ending 31 December 2018.
- b. Management accounts for the period ending September 2019.
- c. Financial Asset register as on 30 September 2019.
- d. Documents and information subpoenaed and obtained in the Section 417 enquiry including, but not limited to, Purchase Order numbers 1312240733 placed with the company by Mercedes Benz SA and various email and other correspondence between the contracting parties.
- e. Draft Liquidation and Distribution Account prepared on 30 November 2021.

There does not seem to be a danger of contribution and creditors are advised to submit their claims.

Section 402(b) Causes of Failure

Eisenmann South Africa (Pty) Ltd ("Eisenmann SA") operated as a wholly-owned subsidiary of Eisenmann Anlagenbau GmbH & Co ("Eisenmann Germany"). Eisenmann both locally and internationally traded in the provision of systems for surface finishing technology, environmental technology, material flow automation process and high temperature technology. In essence, the painting and coating of motor vehicles during the manufacturing process.

Eisenmann Germany and Mercedes Benz ("MB") (Germany) had a historical relationship which led to MB Germany placing an order with Eisenmann Germany for the construction and fitting of a new paint shop at the MB factory in East London. Eisenmann Germany in turn placed an order with Eisenmann SA. The relationship between the two German companies deteriorated which caused Eisenmann Germany to become financially distressed and it entered restructuring/insolvency proceedings. These proceedings in Germany caused the restriction of funding emanating from the German company and led to the local company being starved of sufficient funding to execute on its contractual obligations.

The liquidation application was launched by Cadcon, a supplier to Eisenmann SA in the manufacturing of the new paint shop in East London.

Section 402(c) Reportable contraventions in terms of Section 400(2)

No report in terms of Section 402(c) has been submitted and at this stage, it does not seem necessary.

Section 402(d) Personal liability of Directors in terms of Section 424

At this stage, we have not yet determined whether any director or former directors of the company should be held liable for any damages to the company, or compensation for debt or liability by the company, as determined by law, be held responsible in terms of Section 424 of the Companies Act. The liquidators have not yet finalised their investigations into the affairs of the company. If the investigations reveal any information, which shows that a director or former directors should or could be held liable in terms of this section, the liquidators will take the appropriate steps to enforce such personal liability against any director.

Section 402(e) Legal proceedings

We are not aware of any pending legal action, save and except for matters relating to creditors suing for outstanding debts.

Section 402(f) Enquiry

An order was granted on 20 February 2020 in the High Court of South Africa, Pretoria for the extension of the provisional liquidators' powers in terms of Section 386(5) read with section 387(3) of the Companies Act 61 of 1973, to conduct an enquiry into the trade, dealings and affairs of the company.

The enquiry in terms of section 417 has commenced and a number of witnesses have testified and a number will still testify. The enquiry is ongoing and once it is finalised, the Commissioner will issue his report in terms of section 418. The liquidators will be guided by the recommendations contained in the report. Please also refer to what stated above in respect of the information and evidence already obtained at the enquiry in relation to the possible impeachable transactions under note 4.

Section 402(g) Accounting records

The liquidators were provided with management accounts as on 30 September 2019 and signed Annual Financial Statements for 2018. These accounts were reliable and accurate and were of assistance to the liquidators in establishing the financial position of the company. The company did comply with the applicable regulatory provisions in respect of the maintenance and submission of financial statements as contemplated in the Companies Act.

Section 402(h) Progress and prospects of the winding up

Once the liquidators have concluded their investigations into the affairs of the company and sufficient assets have been realised, the First Liquidation and Distribution Account will be drafted and lodged with the Master of the High Court. It is envisaged that more than one Liquidation and Distribution account will be lodged in due course. This includes the contemplated actions (sections 29, 30 and 31 of the Insolvency Act) pursuant to the information and documents obtained during the Section 417 enquiry.

Section 402(i) Other matters or specific directions to the liquidators

Creditors are requested to advise whether there are any specific matter that they wish the liquidators to investigate or to enquire about.

We request and recommend that creditors consider the report and adopt the attached resolutions to enable us to proceed with the matter.

For more information regarding this matter, please consult our website:
<http://www.sechaba.co.za/matters/910-eisenmann-south-africa-pty-ltd>

SIGNED at PRETORIA on this 8 day of March 2022.



CLOETE MURRAY
CO-LIQUIDATOR
C/o Sechaba Trust
P O Box 11889
TRAMSHED
0126
TEL: 012 340 0093

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SIGNED at PRETORIA on this 9th day of MARCH 2022.


GLADYS NKATEKO NGOBENI
CO-LIQUIDATOR
C/o Sechaba Trust
P O Box 11889
TRAMSHED
0126
TEL: 012 340 0093

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RESOLUTIONS SUBMITTED TO AND ADOPTED AT THE SECOND AND GENERAL MEETING OF CREDITORS, TO BE HELD BEFORE THE PRESIDING OFFICER, MAGISTRATE: KEMPTO PARK ON TUESDAY, 19 APRIL 2022 AT 09:09

It is resolved:

1. THAT the report of the liquidators be hereby ratified, adopted and confirmed.
2. THAT the actions of the liquidators to the date hereof, be and are hereby confirmed.
3. THAT the actions of the liquidators in utilising the services of a representative for the purpose of tracing assets, taking stock and taking possession of assets, be and are hereby confirmed, his fees to be paid by the estate.
4. THAT the action of the liquidators in engaging the services of a chartered accountant and or bookkeeper for the purpose of investigating the affairs of the estate, to complete income tax and any other returns legally required, draft financial statements and to draft the liquidation and distribution account to, be and is hereby confirmed, his fees to be paid out of the estate.
5. THAT the liquidators be authorised to engage the services of a labour consultant for the purpose of negotiating and liaising with employees and/or their representatives as provided for in Section 38 of the Insolvency Act.
6. THAT the liquidators be authorised to engage the services of attorneys and/or counsel and/or shorthand writers for the purpose of :
 - a) taking any legal opinion that may be considered necessary in the interest of the estate;
 - b) by instituting or defending any action in respect of any matter affecting the estate in any court of law;
 - c) instituting an enquiry into the affairs of the estate;all costs so incurred to be treated as administration charges against the estate.
7. THAT the liquidators be and are hereby authorised to dispose of all the assets in the estate, by public auction, public tender or private treaty, as they in their discretion may deem fit.
8. THAT the liquidators be and are hereby authorised to hand over the book debts of the estate for collection by an attorney, his fees and disbursements to be paid by the estate.

9. THAT the liquidators be authorised to engage the services of an information technology (IT) specialist for the purpose of obtaining copies of all electronic data of the company including the management and hosting of such data off-site and that the costs of the copying and management of the data be costs in the administration of the estate.
10. THAT the liquidators be and are hereby authorised to sell or abandon any book debts that they in their discretion considers to be bad and irrecoverable, or that they consider do not warrant the expense of legal proceedings.
11. THAT the liquidators be and are hereby authorised to dispose of any of the secured assets in the estate to the secured creditors on such terms and conditions as they may in their discretion decide, in order to settle their claims.
12. THAT the liquidators be and are hereby authorised to compromise any claim by or against the estate, without the necessity of asking creditors specifically for confirmation thereof.
13. THAT the liquidators be empowered to take over any of the lease assets, which they think may be to the advantage or the benefit of creditors and dispose of same, either by public auction, private treaty or public tender.
14. THAT the liquidators' actions in having placed advertisements in the press, prior to this meeting regarding the auction sale, be and is hereby confirmed.
15. THAT the liquidators' actions in having disposed of the assets, prior to this meeting, be and are hereby confirmed.
16. THAT the liquidators be and are hereby authorised to lodge a bond of security and that the premium thereof be treated as a cost of administration.
17. THAT all reasonable expenses incurred by the liquidators for their personal/employees' transport and accommodation in the performing of their statutory duties as liquidators be paid as costs of administration additional to the Liquidators' fees as soon as funds are available in the estate. Such expenses include hotel accommodation, air transport, vehicle rentals and travel costs at AA-tariffs.
18. THAT the liquidators are authorised and instructed to pay all the reasonable charges of services provided in assisting creditors in preparing and proving their claims against the estate.
19. THAT the further administration of the estate be left in the hands of the liquidators.

CREDITORS:

PRESIDING OFFICER/ MASTER OF THE HIGH COURT