



PATHER & PATHER

ATTORNEYS, NOTARIES & CONVEYANCERS

DATE: 17 JUNE 2020

OUR REF: SIVI PATHER/rg/

YOUR REF:

Joint Business Rescue Practitioners of Edcon Limited
Mr Piers Michael Marsden & Mr Lance Shapiro
Matuson Associates

Per Email: creditors@edconbr.co.za

Dear Piers

BUSINESS RESCUE : EDCON LIMITED

INTRODUCTION

1. Our letter of earlier today refers.
2. We indicated therein that we had received various instructions and would, in all likelihood, be addressing you further in regard thereto.

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3. Please note that what is set out herein is not necessarily exhaustive of our instructions and that, quite apart from issues that arise from your responses to the various matters raised herein and which responses may itself generate further enquiries or the like, it is possible that we will be again instructed to write to you in respect of further issues.
4. For the sake of convenience, we will deal with matters under the rubric of various headings.

THE ROLE OF BR PRACTITIONERS

5. Our clients certainly do not need to advise you of your obligations and responsibilities in law.
6. Suffice it to say that at the heart of the notion of Business Rescue lies the best interests of the creditors of a financially distressed entity.
7. Furthermore, the creditors are entitled to any and all information which they reasonably require in order to consider any Plan.
8. In addition, BR Practitioners appointed to a distressed entity serve as Officers of the Court thus placing on them an onerous responsibility in law.

LACK OF INFORMATION


9. One or more of our clients have written to you, from time to time, requesting information.

10. We are instructed to record that your responses thus far have fallen far short of their expectations and that they are not prepared to countenance this any longer.

11. Without derogating from the generality of the foregoing, they have, for instance, not been furnished with:-
 - 11.1 A copy of the unaudited financial statements for Edcon as at March 2020. (As also already advised, such statements were previously available on the Edcon website but that is no longer the case).
 - 11.2 A detailed itemisation of how the R2.7-billion, which was raised in June last year, was utilised.
 - 11.3 The revenue generated for the month of May 2020 as well as a breakdown of the expenses met by this revenue.
 - 11.4 The current bank balance as well as the current inventory.

Whilst we have itemised these above as having been previously sought from you, kindly note that we will be referring to some of these matters hereunder again.

12. Kindly ensure that the information that has been sought is immediately made available to all our clients. It will be acceptable if you forward that information and documents to our offices as we are quite happy to disseminate the information to our clients on your behalf.

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ISSUES RELATING TO YOU IN YOUR CAPACITIES AS BR PRACTITIONERS TO EDCON

13. It has come to the attention of our clients that Mr Marsden is presently in Canada and has been there throughout the course of the Business Rescue of Edcon. We are instructed to enquire from you as to whether this is in fact correct. If it is not, then that is the end of this particular enquiry.

If it is correct, our clients enquire as to how Mr Marsden is able to discharge his obligations to Edcon in Business Rescue whilst being physically located abroad? This in light of the fact that the role of BR Practitioners is to effectively take over the management of a company to which they have been appointed.

14. In the Plan, you advise that you estimate that your costs attendant upon your role as BR Practitioners of Edcon will be significantly less than the estimated R66-million for the costs of a liquidator. In light of this, why have you not disclosed to the concurrent creditors what fees you have earned up to now and what you anticipate your total fees will amount to? Whatever your answer in regard thereto, we are instructed to require that you make this information immediately available to our clients by way of response to this letter to our office.

15. You have made available a copy of a draft agreement between Edcon and yourselves in regard to increasing your remuneration per hour to what you assert to be a more market related rate. The only motivation that you put forward in regard thereto is that Edcon is a large company. In the respectful view of our clients, it does not axiomatically follow that because one is dealing with a large company BR Practitioners are entitled to an alleged market related rate per hour. In this regard, our clients require you to set out a full and proper motivation of why it is that you contend you are entitled to an increased hourly remuneration rate.



16. Whilst it is, in the respectful view of our clients, acceptable for you, in your role as BR Practitioners of Edcon, to advance reasons as to why your proposed Business Rescue Plan is better than a liquidation, surely it is self-serving for you to allude, in this regard, to your fees as BR Practitioners as compared to the fees which are anticipated will be earned by a liquidator, should the company be wound up, considering that, as a matter of law, you know full well that you cannot be appointed as liquidators to the company should it be wound up?

RESERVATION OF OWNERSHIP

17. The Plan published by you makes no provision, in its calculations, that our clients are able to discern, in regard to payments to be made to suppliers who have a reservation of ownership over their goods. This both in relation to goods sold to the company as well as those supplied on consignment.
18. In this regard we should advise that we have already investigated the veracity of such claims of a few of our clients and it appears, *prima facie* at least, that their claims to reservation of ownership are valid. Furthermore, some or more of our clients fully intend to assert these claims commencing right from the beginning of the lockdown through to the ensuing Business Rescue of Edcon. The question arises as to why it is that you have not invited suppliers, in any meaningful manner, to submit to you, for your consideration, their assertion to reservation of ownership alternatively why have you not engaged with them meaningfully in this regard? At the lowest, this exercise would be necessary for you to ringfence the proceeds due to these persons more especially as you undertook to attend to such ringfencing. The correspondence addressed to you in respect of this issue has simply been ignored. Why is this so?



19. Furthermore, one or more of our clients have supplied goods to Edcon on a consignment basis but have not received any payment from you in respect of the sale of such goods. Could you please explain why these payments have not been made.
20. What will the effect of this be on the proposed dividend?
21. Surely this is something that ought to have been considered and which continues to demand consideration?
22. The concern uppermost in the minds of our clients is that during the period that they have gone along with the Business Rescue, that is up until now, you have been busy disposing of merchandise over which they have legitimate claims of reservation of ownership and using the monies thereby generated to make payments to other persons.
23. Why should our clients accept this? Surely they are better off bringing an urgent winding up application so that the goods that remain are preserved intact such that they can then vindicate such goods? This in addition to requiring or demanding payment to them of the proceeds in respect of all such goods that have been sold from the time of the lockdown through to the Business Rescue as they are entitled to such proceeds in law?
24. We are also instructed to point out that despite protestations to the contrary emanating from some or more of the allegedly secured creditors, their assertion that the proceeds from goods realised are reserved for those allegedly secured/preferred creditors cannot trump the rights of suppliers, with a reservation of ownership over such goods, to such proceeds.



CURRENT INVENTORY AND CASH BALANCE

25. The Plan, as well as the balance sheet belatedly disclosed on 15 June 2020 and furnished on 16 June 2020, reflects inventory and cash balance as at 30 April 2020.
26. How does this assist in a consideration of a Plan as at 22 June 2020?
27. There can be no argument whatsoever that our clients are entitled to current information in regard to inventory and cash balance and can simply not understand your failure to make such figures available to them.

NO DISCLOSURE OF TRADING FROM 1 MAY 2020 TO 1 JUNE 2020

28. Why has this information not been made available to our clients?
29. You have furnished our clients with a cash balance as at 30 April 2020 and then an opening cash balance as at 8 June 2020.
30. How are our clients supposed to divine what it is that transpired between those dates?
31. This is fundamental and vital information which you are required to make available forthwith.

ALLEGED MISREPRESENTATIONS

32. Some or more of our clients have brought to your specific attention alleged misrepresentations made by Executives of Edcon.

33. From the documents at hand, it appears that these concerns have simply been fobbed off by you.
34. You need not be reminded that our law requires BR Practitioners to investigate such allegations. Notwithstanding, there is no evidence whatsoever that you have done so. Why is this so?
35. Have you, for example, investigated why the Financial Director of Edcon resigned in February 2020? What is it that actuated him to do so?
36. You were specifically asked how it was that the CEO of Edcon made a statement that the value of the inventory as at the end of March 2020 was in excess of R3-billion when you now effectively reflect that inventory to be just over R2-billion as at that date? Your response was to say that may be the CEO was talking about the sale price of the merchandise. When it was pointed out to you, by one of our clients, that they have been dealing with Edcon, as constituted from time to time, for some fifty years now, that the suppliers (as part of their obligations) price the merchandise for retail sale and that they know, as a matter of fact, that the mark up is invariably 100%, you were not able to offer any explanation. Nor have you subsequently reverted on the matter which is one of considerable significance. You are duty bound to canvass this matter with the CEO. Have you done so? If not, then why not? Do you consider this to be trifling or unimportant in your greater scheme of things?
37. Some or more of our clients have brought to your attention that the CEO of Edcon made several public statements to the effect that the company was debt free after the restructuring at the middle of last year. It was based on these statements, *inter alia*, that our clients continued to supply merchandise to Edcon and to extend credit to it. It now appears that there is substantial long term debt.



It is no answer to say that a reference to the Edcon website at the time referred to "Notes". What is that supposed to mean to the lay businessperson? Especially when the CEO publicly states that the company is debt free. Even a business reporting entity such as Money Web recorded at the time that the company was debt free. If it did so, how can anyone conceivably expect our clients to have known that there was still substantial long term debt?

What is highly concerning, in regard to the debt of long term lenders which was not converted to equity, on the grounds that certain targets were not met, is the timing of the said targets not being met. Our clients do not believe or accept that this occurred in March 2020. This failure to attain certain targets clearly happened much earlier. **At that point in time, at the very latest, Edcon was duty bound to advise all creditors that the targets had not been met, that long terms lenders were not going to convert debt to equity and that the consequence of this was that the company was now saddled with very substantial long term debt. If this had been done, the concurrent creditors would not have continued supplying goods to Edcon and would not find themselves in the position that they do today.**

Have you investigated any of this? If not, then why not? What plausible justification can there be for not doing so?

38. Have you, for instance, investigated whether Directors and/or Officers of Edcon have been guilty of reckless trading? Our clients are experienced businesspeople and would not have sold goods to Edcon and extended credit to it if they had known that it was in a precarious financial position. These circumstances cry out for and demand an investigation, yet you show no interest or inclination to do so. Why not?



RELIANCE ON DELOITTE

39. It would appear that both the anticipated dividend under the Plan as well as the anticipated dividend under liquidation have been calculated by Deloitte.
40. Whilst the Act does not expressly require an independent party to determine this, surely the circumstances of the present matter militated very strongly in favour of engaging an independent party to make these determinations? Furthermore, it is also perplexing to our clients that you can refer to these determinations as emanating from an independent source. Independent of whom? Of yourselves? How does that assist?
41. Furthermore, what is the value of these determinations when Deloitte expressly record that they have not independently verified information but have relied on what was supplied to them by management?
42. We have already dealt with the issue of statements and alleged misrepresentations made by management at Edcon. These were brought to your attention timeously. Notwithstanding, you consider it appropriate to get the current auditors of Edcon to do the calculations in question based on information provided to them by management and you then tender that as part of your plan? And you expect our clients to accept that these calculations are reliable?
43. In the respectful view of our clients, these calculations are not worth the paper that they are printed on.



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[Handwritten signature]

APPARENT FAVOURING OF SECURED/PREFERRED CREDITORS

44. Having reviewed the schedule relating to concurrent creditors, our clients are most disturbed to note the sloppy, shoddy and tardy manner in which this has been cobbled together.
45. There are glaring errors.
46. For example, figures are repeated and clients have advised that the amounts reflected in the claim column does not tie up with the claims that they have submitted.
47. The overall impression that is created is that there is little or no attention being given to the interests of the concurrent creditors. Almost as if you assume that there is going to be no dividend to them and it makes no difference as to how carefully or otherwise their figures are represented.
48. Our clients take very serious objection to this.
49. Our clients' concerns are not limited to the foregoing.
50. The overall impression created is that your only interest is that of the secured/preferred creditors. This appears, for example, from the position that you seem to adopt in regard to the proceeds of the sale of merchandise being ringfenced for such creditors in circumstances where you plainly disregard the rights of our clients to establish their reservation of ownership over this merchandise.

ALLEGED SECURED/PREFERRED CREDITORS

51. Our clients are aware that you have undertaken to make available to the Independent Chairperson alternatively have made available to the Independent Chairperson relevant documents relating to the alleged security or preference of some creditors.
52. Our clients find this entirely unsatisfactory.
53. There is no conceivable reason in law why they should have to rely on the opinion of the Independent Chairperson in regard to the efficacy of any such instruments. More so in circumstances where the Independent Chairperson, at the Committee of 4 June 2020, already opined, apparently without the benefit of any investigation, that in her view there was no impropriety attaching to the instruments in question.
54. Any and all creditors have a right to consider these instruments and to come to their own conclusions in the matter.
55. Our clients accordingly require that these documents be made available to them, through our office, and that this take place forthwith.

ADDITIONAL ENQUIRIES/INFORMATION AND DOCUMENTS

56. In addition to the foregoing, we are also instructed to require of you to respond to the following enquiries/request for information and to make available the documents referred to hereunder.

Enquiries/Information

57. As previously pointed out to you, although the Act does not expressly provide for a winding down process under the rubric of Business Rescue our appeal courts have permitted this. That, however, does not absolve duly appointed practitioners from adhering to the precepts of the Act to the extent that they are able to do so.

In this regard, we are instructed to enquire as to why no effort has been made to furnish creditors with a current balance sheet?

Furthermore, whilst you may not presently have the precise terms of a sale of one or more divisions of the business, it cannot be that you have no idea whatsoever as to what it is that you are hoping to realise in terms of such a possible sale. Premised on that, why have you not provided a *pro forma* balance sheet of what the position will be should a sale be realised? Surely this is not a difficult exercise at all?

58. Another way of expressing the enquiry immediately above is to ask as to why you cannot make the commercial terms of a possible sale available to the creditors, even if there is a legitimate reason not to disclose the identity of a suitor or suitors?
59. Another expedient would be for certain members of the Creditors Committee to be furnished with all the relevant details subject to them signing non-disclosure agreements. Why has this not been considered? In this regard you need to be advised that the fact that the Chairperson has been apprised of the details is cold comfort to our clients. They are business-people and they are the creditors, some or more of whom have been dealing with the Company, as constituted from time to time for fifty years as already mentioned. How does it assist them if a professional attorney is privy to these details? Surely they are in a better position to assess any offers made? We are instructed that one of the reasons tendered for the non-disclosure of the suitor or suitors is that it



is or they are public companies. With respect, this point makes no sense whatsoever for the simple reason that it would be entirely unlawful for such a company or companies to be flirting with the notion of acquiring Edcon or one or more of its divisions without actually placing a cautionary on its shares. Our clients simply do not accept this reason as being legitimate.

60. In terms of your Business Plan as presently published you are, in effect, asking for a blank cheque to decide whether or not to enter into a sale of any portion or a whole of the business and on what terms. What kind of a creditors approval is that supposed to be? It is unprecedented and audacious in the asking.

You should be advised that our clients have no appetite whatsoever to agree to such an expedient.

What impediment, if any, is there to you bringing back to the creditors, for their informed approval, any serious offer made? Why cannot an acceptance be conditional upon approval by the relevant stakeholders? This is an expedient that is adopted in commerce on a daily basis and there is nothing novel about it whatsoever.

61. The Hollard investment, presently sitting in Newco, is estimated by our clients to have a value of approximately R4-billion. Presumably, this investment was taken up from Edcon to the level of the Newco as a condition for securing the restructure consummated in the middle of 2019. We are instructed to enquire as to whether this transaction was effected at fair value? If the answer is yes, then you are required to provide the necessary investigation conducted by yourselves in order to establish this. If the answer is no, then the question is why have you not undertaken this exercise?



62. We are instructed to enquire as to whether the loans of the lenders have not been subordinated, regard being had to the fact that some or all of them are also shareholders in Newco through which the funding, in any event, in all likelihood emanates? More so considering that this is standard practice. If not, our clients require a proper explanation for this. If the loans have been subordinated, our clients require the documentation in support thereof.
63. The dividend which you set out in the published plan reflects an anticipated dividend to concurrent creditors of four cents in the Rand in the event of a wind down process. Apparently, this number was touted at six cents in the Rand at the meeting of the Creditors Committee held on Monday, 15 June 2020. What actuated this 50% increase? Where does it come from? What changed to take it from four cents to six cents in the Rand?
64. The plan suggests the expectation of a waterfall in the event of a sale of a part or the whole of the company. But is it not in fact correct that all the assets, save and except for stock in trade, constitute security for secured and/or preferred creditors? Is the reality not that any such sale will make not one iota of difference to the position of the concurrent creditors insofar as their expected dividend is concerned?
65. Edcon is one of the largest traders in mobile phones and their attendant contracts. It is notorious that such contracts provide a monthly annuity income. Why has this not been given any value in the financial information for the company that has been provided?
66. We are instructed to enquire as to what the executive remuneration of the company was for the twelve months leading up to the business rescue?



67. We are also instructed to enquire as to why a full and comprehensive schedule of creditors is not contained in the Business Plan? It is quite plain that the schedules of creditors forming part of the Business Plan are entirely different from the quantum of creditors that is reflected in the balance sheet as at 30 April 2020.

Documents

68. Our clients require a copy of the advice that you provided to Edcon, in 2019, in regard to a possible winding up of the company.
69. They also require a copy of the exercise in terms of which Deloitte calculated the anticipated dividend or lack thereof on liquidation.
70. Also required is a copy of the exercise in terms of which Deloitte calculated the anticipated dividend in a winding down process.
71. Copies of the minutes of all meetings of the Employees' Committee, the Landlords' Committee as well as the Lenders'/Secured Creditors' Committee are required.

CONCERNS WITH MEETING PROCEDURE

72. It is not acceptable to our clients that the meeting convened for the purposes of voting on the Plan should be held by way of webinar, as advised by you at the meeting on Monday, 15 June 2020. What is the rationale for this? How can that constitute a meeting where there can be a free exchange of thoughts and where there can be open discussion? Is this intended to suppress discussion? Our clients insist that an audio-visual platform be used, as it is on a daily basis, to hold such a meeting being one that



allows for normal discussion and debate. How is all of this going to be achieved by webinar?

Section 152 of the Act expressly provides that for the meeting in contemplation the practitioner must allow an opportunity for the employees' representative to address the meeting, invite discussion and entertain and conduct a vote on any motions to amend the proposed plan in any manner moved and seconded by holders of creditors' voting interests, and satisfactory to the practitioner; or direct the practitioner to adjourn the meeting in order to revise the plan for further consideration.

73. In addition, our clients were shocked to discover, at the Creditors Committee meeting of 15 June 2020, that no proper thought had been given to the mechanics of holding such a meeting. This includes, without derogating from the generality thereof, an independent verification of voting. The present suggestion that the Chairperson will perform this role is totally unacceptable to our clients for, *inter alia*, reasons which follow hereunder.
74. In addition, persons at Edcon are phoning various suppliers, including our clients, to enquire from them as to how they propose to vote on the Plan. On whose authority are they doing this? Such persons have no right to make these enquiries. Are you aware of this taking place? If not, what steps will you take to ensure that it does not continue?
75. Given that this kind of meeting is novel, have you thought through what process will be followed should the outcome of the vote be disputed on the day in question? If not, then why have you not done so? You are creating the impression that you are simply going through the motions? This will not be countenanced or accepted by our clients.



76. In light of all of this, in the respectful view of our clients, you are not yet in a position to convene and conduct a legitimate and lawful meeting. It is palpably plain that you have simply not done your homework in this regard.

ROLE OF INDEPENDENT CHAIRPERSON

77. Our clients note that there is no specific contemplation of a position of a Chairperson to a Creditors Committee or to any other Committee, constituted under Business Rescue, for that matter.
78. That said, however, our clients cannot, in principle, fault your suggestion that, for practical purposes, a Chairperson to a Committee should be appointed.
79. The difficulty that our clients have is the assertion that the person so appointed by you is "*independent*".
80. Our clients are aware that your firm, *inter alia*, was and continues to be involved in the Business Rescue of South African Airways SOE.
81. They are also aware that the present Chairperson of the Concurrent Creditors Committee also serves as the Chairperson on one or other such equivalent Committee in that Business Rescue.
82. Our clients are most aggrieved at the manner in which the Chairperson has conducted meetings, leaving them with an abiding perception that she is not acting in their interests.



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83. Their concerns are exacerbated by the fact that she also acts as Chairperson, presumably under your instruction, in the South African Airways Business Rescue. Their sense is that she is beholden to you and is seeking to do your bidding rather than being concerned about the best interests of the Concurrent Creditors.
84. There is no point in debating whether or not, as a matter of fact, the Chairperson is or is not acting in the best interests of the Concurrent Creditors.
85. In our law, the test is one of perception and this is a perception that they genuinely and reasonably have.
86. In all the circumstances, our clients are not prepared to accept the continued Chairpersonship, by the present Chairperson, of the Concurrent Creditors Committee.
87. In the circumstances, we are instructed to enquire whether you will be prepared to forthwith terminate the mandate of that Chairperson and permit the Committee itself to appoint its own Chairperson?

URGENCY

88. Our clients are experienced people and understand the concept of urgency.
89. However, we are instructed to point out that in their respectful view there is a huge difference between urgency and indecent haste.
90. It is the view of our clients that you are trying to steamroll this Plan through.

91. We are instructed to advise that our clients will not accept this.
92. If there are delays in the matter, this is as a direct result of your failure to make information available to our clients alternatively to make such information available timeously.
93. Our clients will not be cajoled into a vote and will only do so when they are in a position to arrive at a considered judgment in the matter.

CONCLUSION

94. It should be evident to you that there are various legal options open to our clients.
95. Our clients trust that it will not be necessary for them to pursue a litigious route, that you will provide the relevant information and documents to them, that you will consult and engage with them properly and meaningfully, as countenanced in law, such that a decision can be taken or an approach can be adopted which is to the general benefit of all parties in this matter.
96. We are instructed to require that the information and documents be made available to our clients, through our office, by no later than 16:00 on Friday, 19 June 2020.
97. Please be advised that what is set out in paragraph 96 above is premised on your agreeing to a one week adjournment of the meetings scheduled for Monday, 22 June 2020.



98. In the event that you are not so agreeable to a postponement, our clients will be constrained to approach the High Court for appropriate relief on an urgent basis.
99. Should they be so constrained, then you will understand and appreciate that, at a practical level, they will have no alternative but to include in such application a prayer or prayers for appropriate relief in regard to the enquiries/information and documentation sought herein. To put it differently, it will be inconvenient to the court for our clients to bring two separate applications namely one for a postponement and one for enquiries/information and documents, even if it should be that you are prepared to comply with the requirement for the latter.
100. We are recording, not as a threat, but simply because we are obliged to do so as a matter of procedural law, that should it become necessary for our clients to bring such an application, they will, in the first instance, seek costs against you *de bonis propriis*.
101. It is their sincere wish that an application, together with the attendant costs thereon, will not be necessary, that you will act reasonably, sensibly and in accordance with your obligations in law and that both the question of a postponement of the meeting as well as that of enquiries/information and documents can be resolved without any resort to legal process.

Yours Faithfully

PATHER AND PATHER ATTORNEYS INC.

"Sivi Pather"

PLEASE DIRECT ALL RESPONSES TO:
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