MISC.APP.042/20 2020 T. NO.5

IN THE HIGH COURT OF SIERRA LEONE

(COMMERCIAL AND ADMIRALTY DIVISION)

FAST TRACK COMMERCIAL COURT

BETWEEN:

TONKOLILI IRON ORE (SL) LIMITED - PLAINTIFF

AND

OFFICIAL RECEIVER AND PROVISIONER LIQUIDATOR- APPLICANT

RULING DELIVERED BY HONORABLE JUSTICE LORNARD TAYLOR ON THE 15TH OCTOBER 2021

Counsel approached this court on behalf of the Official Receiver and Provisional Liquidator by Notice of Motion dated 22nd June 2021 and prayed for inter alia the following orders:

1. That this honourable court appoints the Official Receiver and Provisional Liquidator herein as Substantive Liquidator for the purposes of winding up of the Petitioner Company herein, pursuant to Section 336©, Companies Act 2009.
2. That this honourable court also approves of the fees to which the Applicant is entitled both as official Receiver and Provisional Liquidator, and as Liquidator when appointed.

The application as stated by counsel for the applicant was made pursuant to Section 364 and 366 © of the Companies Act 2009.

In opposition to the application, BerthanMacauley filed and affidavit in opposition "For and on behalf of the creditors herein" which I take to mean Magma and AMC. In addressing the court on his opposition to the

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application, counsel made quite clear that his opposition to the application was only in part.

Firstly, counsel is not opposed to the Appointment of Mr. George Taylor as the Substantive Liquidator. However, he pointed out that the evidence before the court is that Mr. George Taylor is also a creditor and as such he expects no bias from him during the liquidation process. All creditors have to be treated the same and by the law.

Secondly, he drew the court's attention to Rules 157 and 158 of the Companies (Winding up) Rules 1929 with respect to the remuneration of the Liquidator. His concern is that in fixing the remuneration of the Liquidator, the percentage of the amount realised is taken into consideration as opposed to the percentage of the amount claimed by the creditors.

He further highlighted that there is no resolution with respect to the appointment of a committee of inspections and if there was one, it ought to have been filed in compliance with Rule 133 of the Companies (Winding up) Rules 1929.

I take the points raised by counsel and I have no doubt in my mind that this it falls within the authority of this court to appoint a liquidator for the winding up of the petitioner and I will so do accordingly. Counsel's concerns are also noted and this court agrees with them. This court will in the circumstances address all these issues in its orders accordingly.

Having considered the Application, the evidence and arguments of counsel, I hereby order as follows:

1. Mr. George Carl Taylor is appointed Liquidator for the process of winding up the Petitioner.

2. The Liquidator, as applicable, is vested by operation of law with title to all of such Petitioner's property and such property shall include property of any kind or nature, whether real, personal, or mixed, including but not limited to money, funds, cash, stock, bonds, account deposits, statutory deposits, special deposits, contents of safe deposit boxes, funds held in share accounts or trust accounts,

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retainages and retainers, letters of credit, real estate, fixtures, furniture, equipment, books, records, documents and insurance policies, intellectual property, computer software and systems, information technology, internet domain names, patents and intangible assets, whether owned individually, jointly, or severally, wherever located, and all rights, claims or causes of action belonging to Petitioner, whether asserted or not, including but not limited to accounts receivable, notes, premiums, subrogation, insurance and reinsurance proceeds, and all licenses held by the Petitioner (collectively, "Petitioner's Property")and shall extend to all items owned by Petitioner, regardless of the name in which such items are held.

3. In addition and not limited to the powers as ordered herein the Liquidator is granted and given all powers and authority under the Companies Act 2009and any and all other powers and authority under applicable under the laws of Sierra Leone.

4. The Liquidator is authorized to conduct the Petitioner's business, administer the Petitioner's operations, and enter into any contracts necessary to perform the Liquidator's duties, at his discretion.
5. Title to all of the Petitioner's Property, including but not limited to all the assets and rights described in this Order Appointing Liquidatoris vested in the Liquidator.
6. The Liquidator is authorized to take control and possession of the Petitioner's Property, wherever located, and should there be the need and the means available, remove all such property from Petitioner's premises.
7. The Liquidator is vested with all of the Petitioner's rights as the customer of any bank, financial institution or other depository. The Liquidator is authorized to withdraw the Petitioner's Property from any such entity or continue the operation of any accounts of the Petitioner at his discretion.
8. The Liquidator has all the powers of the Petitioner's directors, officers, and managers, and the authority of such directors, officers, and managers is suspended, except as permitted by the Liquidator.

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9. The Liquidator is authorized to supervise, suspend, terminate, or dismiss any or all of the directors, officers, managers, employees or agents of the Pettitioner, or retains such persons at his discretion, and compensate them as he deems necessary from the Petitioner's funds.

10. The Liquidator is authorized to retain any professional, administrative, and clerical services as he deems necessary. The Liquidator is further authorized to set the compensation of such persons, and pay for such services from the Petitioner's funds.

11. The Liquidator is authorized to receive, collect, control, open and review all mail addressed to or intended for the Petitioner.

12. The Liquidator is authorized to file, prosecute, defend, or settle any action as he deems necessary but in the best interest of the Creditors, including any action to enforce the provisions of this order.

13. The Liquidator is authorized to exclude any person from any property owned, leased or occupied by the Petitioner, at his discretion.

14. The Liquidator is authorized to assume or reject any contracts to which the Petitioner is a party at his discretion.

15. All powers and authorities ordered herein shall be exercised with a view to winding up the Petitioner and distributing its assets.

16. The Liquidator is authorized to pay end of service and other benefits and workers compensation.

17. The Liquidator shall at all times keep proper financial records and other record of his activities which shall be made available to any creditor at any time a formal request is made, the cost of providing such record to be borne by the creditor making such request.

18. There shall not be a Committee of Inspections and any act, thing, direction or permission authorised or required to be done by the committee pursuant to the Companies Act 2009 and or the Companies (Winding-up) Rules 1929 shall be done or given by the Corporate Affairs Commission.

19. The Liquidator shall receive as remuneration the sum equivalent to 3% of all sums recovered during the winding up process less any such sum as may be lawfully expended in the process after recovery.

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20. Every creditor retains the liberty to apply.

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HONORABLE JUSTICE BERNARD TAYLOR

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