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Business Rescue at the Crossroads: When Creditors Draw the Line

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by Dr. Eric Levenstein – Director and Head of Insolvency & Business Rescue, Amy Mackechnie, Senior Associate and Clio Patricios – Candidate Attorney

In a restructuring environment often shaped by urgency and commercial pressure, the recent judgment in *Tamela Mezzanine Debt Fund I Partnership v KT Wash Detergents Proprietary Limited*^[1] offers a timely recalibration of first principles. It reminds practitioners, funders and stakeholders alike that business rescue is not an exercise in optimism. It is a structured, creditor-driven process that must be grounded in transparency, fairness and demonstrable commercial logic. Where those elements are absent, even a seemingly viable plan will not survive.

KT Wash entered business rescue pursuant to section 129 of the Companies Act 71 of 2008 (the "Act"). A business rescue plan was subsequently published proposing the sale of the business as a going concern. Despite this, the plan failed to secure the required statutory support, achieving only 50.73% of creditors' voting interests, instead of the required 75%. That outcome is significant in itself, but what followed is what makes the case particularly noteworthy.

Section 153 of the Act provides a mechanism to intervene where a business rescue plan has been rejected. It allows a business rescue practitioner to pursue a revised plan, or an affected person to approach the court to set aside the vote as inappropriate. In doing so, it prevents the automatic collapse of the process following a failed vote and creates space for further engagement where justified.

In this instance, an application to set aside the rejection of the plan was brought by a creditor (unusually so) and not by the business rescue practitioners.

Section 153 of the Act is more commonly invoked by business rescue practitioners seeking to salvage a plan that has failed to achieve sufficient support. Here, however, a creditor, who was also a significant post-commencement financier, sought to overturn the collective decision of the creditor body. The argument advanced was that the vote rejecting the business rescue plan was "inappropriate" and should be set aside. This was premised on the basis that it undermined a viable business rescue plan that depended on their ongoing post-commencement finance. They contended that rejecting the plan was commercially irrational, as it jeopardised the rescue process and would likely result in liquidation.

The court did not accept that proposition.

Pullinger AJ approached the matter from a fundamental starting point. The enquiry was not whether the business rescue plan might have produced a better outcome than liquidation, nor whether the court would have preferred the commercial result proposed. The question was whether creditors had been placed in a position to make an informed decision when exercising their vote. On the facts, they had not.

The court found that the business rescue plan put before creditors, lacked the essential factual foundation required by the Act. It did not adequately explain how the proposed purchase price had been determined, nor did it provide a transparent valuation methodology. It also failed to substantiate the dividend outcomes that creditors could expect under the business rescue plan. In the absence of this information, creditors were effectively being asked to approve a transaction without being able to properly assess its fairness or its comparative benefit. In those circumstances, the court held that their rejection of the plan could not be said to be inappropriate.

The judgment is important for what it does not do as much as for what it does. The court did not attempt to substitute its own commercial judgment for that of the creditors. It did not seek to repair or supplement the deficiencies in the plan. Nor did it treat section 153 of the Act as a mechanism to salvage a proposal that had not met the required evidentiary threshold. Instead, it affirmed that business rescue remains, at its core, a creditor-driven process. Where creditors are not given sufficient information to evaluate a plan, they are entitled to reject it, and the court will be slow to interfere with that decision.

From a commercial perspective, the implications are clear. Business rescue plans must do more than present an attractive outcome. They must be capable of withstanding scrutiny. This requires a level of detail and transparency that enables creditors to interrogate the proposal and make an informed decision. Valuations must be explained, assumptions must be defensible, and the distributional consequences must be clear. Absent this, even a plan that appears viable in principle may fail in practice.

The judgment also reinforces the position of creditors within the restructuring framework provided by Chapter 6 of the Act. Their role is not passive. The statutory voting regime places real power in their hands, and this decision confirms that the courts will respect the exercise of that power, where it is grounded in rational commercial reasoning. At the same time, the case serves as a caution to creditors who seek to take a more interventionist approach. Even a significant funder, as a creditor, cannot rely on the court to override the collective will of creditors where the underlying plan is deficient.

Importantly, the dismissal of the application did not bring the business rescue proceedings to an end. The adjourned meeting is to be reconvened, at which creditors may table a motion requiring the business rescue practitioners to prepare and publish a revised plan. In the event that no such motion is tabled, the business rescue practitioners will be obliged to file a notice terminating the business rescue proceedings. For now, the company remains under supervision, and the success of the process will depend on whether creditors elect to pursue a revised plan and, if so, whether such plan secures the requisite support.

The broader message is clear. Business rescue is, at its core, a creditor-driven process. Approval cannot be assumed, and it cannot be compelled. Where creditors do not support a plan, the process does not bend to accommodate it – it resets. The process now returns to creditors, who will determine whether a revised plan is to be pursued. If a revised plan is proposed and secures the requisite support, the company may yet be restructured. Failing that, the business rescue practitioners will be obliged to terminate the proceedings in accordance with the Act.

[1] *Tamela Mezzanine Debt Fund I Partnership v KT Wash Detergents (Pty) Ltd & Others* [2026] 1 All SA 215 (GJ).



Eric Levenstein

Head of Insolvency & Business Rescue

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Amy Mackechnie

Senior Associate

[View Profile](#)