



**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME
COURT OF APPEAL**

FROM The Registrar, Supreme Court of Appeal

DATE 20 November 2020

STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

*CMC v CIPC and Others (1325/2019) [2020] ZASCA 151
(20 November 2020)*

The SCA today dismissed an appeal by Cooperativa Muratori & Cementisi-CMC Di Ravenna Società Cooperativa a Responsibilita Limitata (CMC), a long-established company incorporated in Italy and active in the construction industry internationally and registered as an external company in terms of the Companies Act 71 of 2008. In 2018 it experienced financial difficulties and approached the Court of Ravenna (Bankruptcy Section) for relief in terms of the Italian Bankruptcy Law. The relief it sought was for it to be given time to prepare a plan for the conclusion of a composition with its creditors. An order was made on 7 December 2018 granting it sixty days within which to file a proposal and imposing certain reporting obligations. Three judicial commissioners were also appointed.

On 14 December 2018 the board of directors of CMC passed a resolution placing it under business rescue in South Africa. Business rescue practitioners were appointed, but in February 2019 they were informed by the CIPC that a

foreign company, even if registered as an external company, was not entitled to enter business rescue in South Africa. An application for urgent relief that CMC was validly under business rescue was dismissed by the Gauteng Division of the High Court, Pretoria. The appeal against that order was dismissed by the SCA on the basis that the definition of 'company' in the Companies Act excluded a foreign company, even if registered as an external company under the Act. It followed that it was not capable of being placed under business rescue in South Africa.

The high court had also dismissed an application in the alternative for the recognition of the order of the Court of Ravenna. The appeal against that order was likewise dismissed. The SCA held that the order was moot and the basis for seeking it misconceived. All the events contemplated in the order of 7 December 2018 had occurred and been overtaken by subsequent events including subsequent decisions by the Court of Ravenna. The order had been given by an Italian court under Italian legislation and had no extra-territorial effect. Unless recognition was given by a South African court to a foreign liquidator or trustee or similar person, they would have no standing in South Africa to act in terms of their appointment in another country. The application was not brought by the judicial commissioners appointed in Italy and could not be brought by CMC.