

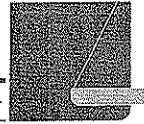
55141143-25-3-2014 dt. 9.1.2015



REPUBLIKA E KOSOVËS / REPUBLIKA KOSOVA / REPUBLIC OF KOSOVO

DHOMA E POSAÇME E GJYKATËS SUPREME / SPECIJALNA KOMORA VRHOVNOG SUDA / SPECIAL CHAMBER OF THE SUPREME COURT

Rruga Nazim Gafurri 31, 10000 Prishtinë, Kosovë / Ulica Nazim Gafurri 31, 10000 Priština, Kosovo / Nazim Gafurri 31, 10000 Prishtina, Kosovo



VËRTETIMI MBI DORËZIMIN E DOKUMENTIT

POTVRDA O DOSTAVI DOKUMENTA

ACKNOWLEDGEMENT OF RECEIPT OF A DOCUMENT

Duke u bazuar në Ligjin nr. 04/L-033 për Dhomën e Posaçme të Gjykatës Supreme të Kosovës për çështjet në lidhje me Agjencinë Kosovare të Privatizimit, pala e nënshkruar më poshtë vërteton pranimin e dokumentit:

Na osnovu Zakona br. 04/L-033 o Specijalnoj komori Vrhovnog suda Kosova za pitanja koja se odnose na Kosovsku agenciju za privatizaciju, dole potpisana stranka potvrđuje dostavu dokumenta navedenog dole:

Pursuant to Law no 04/L-033 on Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters, the below signed party acknowledges receipt of the document described below:

Ndërmarrja: Preduzeće: Enterprise:

Numëri i lëndës: Broj predmeta: Case Number:

Data e regjistrimit: Datum registrovanja: Date registered:

1. Trepça

Socially Owned Enterprise • Mining and Metallurgy-Chemical Combine

AC-I.-14-0247-A0001

9.1.2015

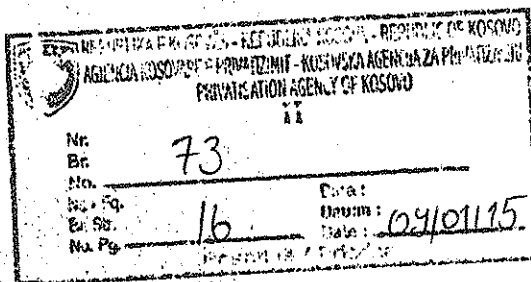
Paditës
Tužilac
Claimant

Përfaqësues
Punomočnik
Representative

I paditur
Tuženi
Respondent

Përfaqësues
Punomočnik
Representative

#	Titulli i Dokumentit:	Naziv dokumenta:	Document Name:	Datë Datum Dated
1	Aktvendim nga Dhoma	Rešenje komore	Decision of the Chamber	8.1.2015

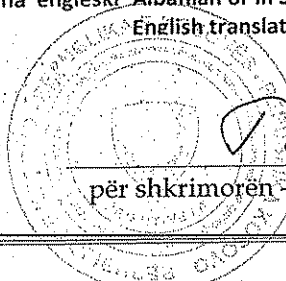


Pala: Stranka: Party: AKP-PRISHTINE
 Pranuar nga: Primio: Received by: _____
 Titulli: Zvanje: Title: _____
 Data: Datum: Date: 09 JAN 2015
 Nënshkrimi Potpis: Signature: _____

Në bazë të nenit 25.8 të Shtojcës së Ligjit nr. 04/L-033, të gjitha parashtrësit dhe dokumentet mbështetëse duhet të paraqiten ose në gjuhën shqipe ose në gjuhën serbe dhe të shoqërohen edhe me përkthimin në gjuhën angleze.

Na osnovu člana 25.8 Dodatka Zakona br. 04/L-033; svi podnesci i prateći dokumenti moraju da budu podneseni na albanskom ili srpskom jeziku zajedno s prevodom na engleski jezik.

Pursuant to Section 25.8 of the Annex of the Law no 04/L-033, all pleadings and supporting documents must be submitted either in Albanian or in Serbian accompanied by an English translation.



për shkrimorën - za pisarnicu - for registry

DHOMA E POSAÇME E
GJYKATËS SUPREME TË
KOSOVËS PËR ÇËSHITJE QË
LIDHEN ME AGJENSINË
KOSOVARE TË
PRIVATIZIMIT

SPECIAL CHAMBER OF THE
SUPREME COURT OF KOSOVO
ON PRIVATISATION AGENCY
OF KOSOVO RELATED
MATTERS

POSEBNA KOMORA
VRHOVNOG SUDA
KOSOVA ZA PITANJA
KOJA SE ODRNOSE NA
KOSOVSKU AGENCIJU ZA
PRIVATIZACIJU

In the appeal of

AC-I.-14-0247

Applicant/Appellant

Privatization Agency of Kosovo (PAK)

Acting in capacity of the Administrator of Socially owned Enterprise "Trepça"
under PAK Administration

The Appellate Panel of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (SCSC), composed of Mr.sc Sahit Sylejmani, the Presiding Judge, Ondrej Pridal, Gertraud Marx-Leitenberger, Ilmi Bajrami and Sabri Halili, Judges, on the appeal of the Appellant against the decision of the Specialized Panel of 31 July 2014, C-V-14-0007, after deliberations held on 8 January 2015, issues the following

DECISION

- 1. The appeal is ungrounded.**
- 2. The decision of the Specialized Panel of the SCSC of 31 July 2014, C-V-14-0007 is upheld.**
- 3. For the reasons of clarification of the enacting clause, point 2 of the decision of the Specialized Panel of the SCSC of 31 July 2014, C-V-14-0007 is to be read as follows: Motion of PAK filed in the same capacity to extend the deadline for submission of Reorganization Plan for "Trepca Enterprise" is hereby granted until 2nd February 2015.**

Factual and procedural background:

On 10 July 2014 the Privatization Agency of Kosovo (acting as Administrator of SOE "Trepça") filed a request asking the SCSC to extend the deadline for the First Creditor Meeting which shall take place not later than 30th of June 2015 and to extend the deadline for the submission of the Reorganization Plan until 31st of December 2015. The Applicant also proposed to oblige the PAK to publish the formal notice for extension of the deadlines; then to oblige itself to send separate information letters to all known creditors who filed creditor claims, notifying them for extension of the deadline as provided under the item 1 and 2 of the proposal within 30 days from the day of receiving of the court decision and also to oblige the PAK to publish the decision of the court at the official web page of the Agency.

The PAK stated that its proposal is in compliance with Articles 7.1, 42.1, 42.3, 42.4 and 42.5 of the Law 04/L-035, on Reorganization of Certain Entities and Their Assets (hereinafter Law on Reorganization). The request on extension of deadline on arranging the First Creditor Meeting and extension of the deadline for submission of the Reorganization Plan is based on general interest of the "Trepça" Enterprise and in compliance with the mandate of the PAK to preserve and enhance the value of the Enterprise.

The PAK informed the court that the Board of Directors of PAK is not completed with all members as foreseen by Article 12 where it have only 5 members including 2 international while it shall have 8 members including 3 international. Appointments of the new members by the Kosovo Assembly are problematic, having in mind that the Kosovo Assembly is not functional since June parliamentary elections. Due to incomplete composition of the PAK Board of Directors the capability of the Administrator to carry out their duties as defined under the PAK Law are heavily limited.

The PAK also pointed out that the tender for the selection of the professional service provider failed as there was only one qualified offer (out of nine) while there should be at least two.

The PAK admitted that it is neither capable of carrying out evaluation of creditor claims and registration of all assets of the Enterprise, nor capable of preparing

Reorganization Plan without engaging professional service provider due to its limited number of staff.

On 31 July 2014, the Specialized Panel issued decision C-V.-14-0007, whereby decided that:

1. Motion of Privatization Agency of Kosovo filed in the capacity of "Trepça Enterprises" Administrator to extend the dead-line for convening Initial Creditors' Meeting is hereby dismissed as inadmissible.
2. Motion of PAK filed in the same capacity to extend the dead-line for submission of Reorganization Plan for "Trepça Enterprises" is hereby granted until 2nd of April 2015.
3. PAK is hereby advised to submit at Special Chamber of the Supreme Court of Kosovo a brief report on their future plans on Reorganization not later than 30 days after notification on this decision.
4. This decision should be published on the Agency's web-site.
5. Notification on extension of the Reorganization Plan dead-line should be notified through newspapers as provided for in Art. 43 of Law 04/L 035.

The Specialized Panel, regarding the motion for extension of the deadline for Initial Creditor's Meeting, reasoned that this is second motion for such extension of the deadline. On 12 December 2012, PAK submitted the request for 30 days extension of the deadline and the Court with the decision C-V.-13-0012, granted this PAK's request on the basis that PAK still has to hire Professional Service Provider. The Court understood the wording of the Article 19 in sense that extension by 30 days can only be granted once. Further stated that such interpretation is logical having in mind that dead-line at hand is counted by adding calendar days to the day of the Claim deadline ("90 days after") since addition available is provided for in the provision, no further extension can be granted. The Specialized Panel concluded that extension for Initial Creditors' Meeting is not available and the request is to be dismissed as inadmissible.

Regarding the request to extend Reorganization Plan deadline, the Specialized Panel pointed out that it is very clear that the PAK is "totally unprepared to even start with Plan drafting".

The Specialized Panel considered that it is common knowledge that 3 out of 8 members of Board of Directors resigned long ago and vacancies are not yet filled. Since April 2013 the Board operates with only 5 Directors. Furthermore – on 31 August 2014 the mandate of the two International Board members expires and unless Kosovo Assembly appoints replacements Board will be completely non-functional and it is fairly possible that replacements will not be appointed for months. In addition, since February 2014 Agency has no Managing Director. Therefore the court decided to extend the dead-line for Reorganization Plan to the maximum limit admissible – 2 February 2015 which will total to 15 months as the maximum extension that could be granted under applicable Law 04/L-035.

On 22 August 2014, PAK filed an appeal with the Appellate Panel due to incomplete determination of the factual situation and erroneous application of material law. The Specialized Panel of the SCSC did not evaluated properly absence of Managing Director, expiration of mandate of the members of the Board of Directors as well and the general situation of the public institutions of Kosovo, namely non-functionality of the Assembly of Kosovo after the elections in June 2014. Moreover the mandate of the international member of the Board of Directors expires on 31 August 2014. The PAK stated that partial approval of the request of the PAK for only 8 months for the preparation of the Reorganization Plan is not sufficient and none of foreign company will bid in a tender for professional service provider with such a short realization period.

The PAK stated that the provision 42.4 implies that the Court has the right to extend any time limit in case it considers that the circumstances deem it necessary. The PAK proposed the Appellate Panel to: approve the appeal of the PAK as grounded and annul the appealed decision in its entirety; approve the request of the PAK for the extension of the time limit for the First Meeting of the Creditors not later than 30 June 2015; approve the request of the PAK for the extension of the time limit for the submission of the Reorganization Plan until 31 December 2015; oblige the PAK to publish this Decision on the official website of the PAK, in the printed local and regional media.

Legal reasoning

Based on Article 64.1 of the ANNEX of the Law No.04/L-033 of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (the Annex), the Appellate Panel decided to dispense with the oral part of the proceedings.

According to Article 19.1 of the Law on Reorganization, the Administrator has to set a date for the Initial Creditors Meeting not earlier than 30 (thirty) days and no later than 90 (ninety) days after Claims Deadline. Upon a request by the Administrator, the Court may extend the time period for holding the Initial Creditor's Meeting by 30 (thirty) days additional.

According to Article 22.1 of the Law on Reorganization, within nine (9) months after the date of publishing the Claims Deadline Notice in accordance with Article 17 of this law, the Administrator shall prepare a proposed Reorganization Plan and shall submit such plan to the Creditors Committee. A copy of such plan shall be simultaneously filed with the Court. The Court may extend the referenced nine-month period for up to a maximum of fifteen (15) months upon one or more requests submitted to the Court by the Administrator setting forth the reasons for such request.

According to Article 42.4 of the Law on Reorganization, the Court may extend any of the time limits established by a provision of this law, except to the extent that the concerned provision imposes a specific restriction on the Court's authority to extend the concerned time limit.

With regard to the extension of the deadline for the First Creditors Meeting, the PAK, previously on 12 December 2013, submitted the first request for extension of 30 (thirty) days, based on the above-mentioned provision. The Specialized Panel of the SCSC with the decision C-V.-13-0012 of 17 January 2014, approved the request of PAK for extension of the deadline for 30 (thirty) additional days, where PAK should file "summary report on the process of preparation of the Initial Creditor's Meeting not later than 15 of March 2014. Taking into account this first extension then the decision of the Specialized Panel on dismissing as inadmissible the second request of for extension (case at hand) is correct. The Article 19.1 of the Law on Reorganization allows only one extension by 30 (thirty) days which is apparent from the wording "by thirty (30) days additional".

This is exactly the "specific restriction on the Court's authority to extend the concerned time limit" expressly mentioned in the Article 42.4 of the Law on Reorganization. Moreover any possible deadline for the First Creditors Meeting is now entirely gone.

The same is the situation concerning the extension of the deadline for submission of the Reorganization Plan for "Trepça Enterprise". With the decision of the Appellate Panel of the SCSC, AC-I.-12-0131 dated 12 February 2013 was approved the request for the PAK to extend the deadline for publication of the Claims Deadline Notice until 1 November 2013. From this date, according to the Article 22.1, the PAK within nine (9) months had to prepare a proposed Reorganization Plan and shall submit such plan to the Creditors Committee, while the Court may extend this deadline for up to a maximum of fifteen (15) months – Article 22.1 of the Law on Reorganization. This "maximum of fifteen (15) months" represents again the "specific restriction on the Court's authority to extend the concerned time limit" expressly mentioned in the Article 42.4 of the Law on Reorganization. Also from the language interpretation of the word "maximum" is clear that it indeed means something which cannot be exceeded. The Appellate Panel concludes accordingly that this deadline was correctly extended by Specialized Panel of the SCSC to a maximum possible limit of 2nd February 2015 and cannot be extended anymore.

As the deadlines established by the law are final (after previous extensions) and cannot be extended any more than the argumentation of the PAK by missing its Managing Director, expiration of mandate of the members of the Board of Director, non-functionality of the Assembly of Kosovo and unwillingness of foreign company to bid in a tender for professional service provider is irrelevant. Therefore the appealed decision is upheld.

The Special Chamber sees the reason to remind the PAK and its Directors on their obvious legal duties to proceed with the reorganization of "Trepça Enterprise" as swift as possible and not to always ask for the extension of every possible legal deadline.

The Appellate Panel rectified the evident clerical error and therefore the enacting clause, point 2 of the decision of the Specialized Panel of the SCSC of 31 July 2014, C-V-14-0007 is to be read as follows: Motion of PAK filed in the same

capacity to extend the deadline for submission of Reorganization Plan for "Trepca Enterprise" is hereby granted until 2nd February 2015 (enacting clause, point 2). It is apparent that in the point 2 of the enacting clause of the appealed decision by mistake was written the wrong date 2nd April 2015 instead of correct 2nd February 2015, as it is clear from the reasoning in the page 5, fourth paragraph of the appealed decision where is expressly mentioned that the Specialized Panel of the SCSC decides to extend deadline until the 2nd February 2015 as maximum admissible limit.

Consequently, it is decided as in the enacting clause of this decision.

Court fees:

No additional court fees are imposed for the appeals proceedings as the Appellant already paid 100 Euros.

Mr.sc. Sahit Sylejmani, Presiding Judge

signed

