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Fighting On

DMR, ICT lodge appeal application with ConCourt on Sishen mining right

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Imperial Crown Trading 289 (ICT) and the Department of Mineral Resources (DMR) have lodged an application with the Constitutional Court for leave to appeal a March 28 Supreme Court of Appeal (SCA) ruling, dismissing their appeal against a 2011 decision by the North Gauteng High Court, which set aside the granting of a prospecting right to ICT by the DMR at the Sishen iron-ore mine, in the Northern Cape.

The SCA held that Kumba Iron Ore's Sishen Iron Ore Company (SIOC) became the sole holder of the mining right at the Sishen mine after ArcelorMittal South Africa (Mittal) failed to convert its undivided share of the old-order mining right to a new-order mining right.

The application to the Constitutional Court is an attempt at resurrecting the long-running dispute, which arose when ICT applied for, and was granted, prospecting rights for the 21.4% undivided share in the property

previously held by Mittal.

These rights flowed from the 2001 unbundling of Iscor into separate steel and mining companies.

SIOC had also applied, unsuccessfully, to convert those rights from the old to the new order in line with the prescriptions of the Mineral and Petroleum Resources Development Act. SIOC, nevertheless, cancelled a cost-plus 3% supply agreement with Mittal, on the basis that the steel group had failed to convert its rights.

But the North Gauteng High Court ruling concurred with Mittal's assertion, that SIOC should have been granted the exclusive right to mine at Sishen and that no other party could, therefore, have been granted the right to prospect on the same property.

Mittal argued that had it believed it would be prejudiced it would have applied for conversion, but it felt secure by virtue of its rights to continued iron-ore supply in terms of the supply agreement, which is now the



Picture by Chris Photographed/Duane Deans

BONE OF CONTENTION

The Department of Mineral Resources and Imperial Crown Trading 289 intend to appeal a Supreme Court of Appeal ruling granting the Sishen Iron Ore Company sole ownership of the mining right at the Sishen mine

subject of a separate arbitration proceeding between SIOC and Mittal.

In a March 28 ruling, the SCA concurred that SIOC had been granted an exclusive mining right over Sishen in 2008.

However, the court also held that Mittal had, in fact, retained the right to lodge its old-order right for conversion before midnight on April 30, 2009, but failed to do so. As a result, SIOC became the sole holder of the new-order mining right.

As a result, the SCA upheld the High Court ruling setting aside the prospecting right granted by the DMR to ICT.