

IRON-ORE

Last Mile?

Arbitration now in focus as court rules on long-running Mittal, Kumba dispute

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The long-running iron-ore dispute between ArcelorMittal South Africa and Kumba Iron Ore took a step closer towards resolution late last month after the Supreme Court of Appeal (SCA) dismissed an appeal by Imperial Crown Trading 289 (ICT) and the Department of Mineral Resources (DMR) against a 2011 North Gauteng High Court ruling on the status of mineral rights at the Sishen mine, in the Northern Cape.

Both ICT and the DMR had appealed Justice **Raymond Zondo's** ruling granting Kumba's Sishen Iron Ore Company (SIOC) exclusive rights to mine iron-ore or quartzite at the property, while setting aside the DMR's controversial decision to grant ICT prospecting rights over the same property.

ICT had applied for prospecting rights for the 21.4% undivided share in the mine held by Mittal, following the 2001 unbundling of Iscor into separate steel and mining companies. SIOC also applied to convert those rights from the old to the new order in line with the prescripts of the Mineral and Petroleum Resources Development Act.

In his ruling, Judge Zondo concurred with Mittal's assertion that, when the DMR effected a conversion of SIOC's old-order mining right in 2008, SIOC had been granted the exclusive right to mine at Sishen and no other party could be granted the right to mine on the same property.

In their March 28 ruling, five SCA judges – **Brian Southwood, Fritz Brand, Carole Lewis, Azhar Cachalia** and acting SCA judge **Kevin Swain** – concurred unanimously that SIOC had been granted an exclusive mining right over Sishen in 2008.

But they also held that Mittal had 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 mining right.

The SCA upheld the High Court ruling setting aside the prospecting right granted by the DMR to ICT.

The DMR and ICT had 15 days to apply to the Constitutional Court for it to deliberate on the matter. But it was not clear at the time of publication whether such a course of action would in fact be taken. Should there be no Constitutional Court application, or should the court turn down such an application, the focus would turn to arbitration proceedings between Mittal and Kumba.

The proceedings would most certainly focus on the status of the cost-plus-3% Sishen supply agreement, from which Kumba unilaterally withdrew on February 5, 2010, citing Mittal's failure to convert its rights.

Arbitrators have already been appointed and work would now be accelerated to

finalise the necessary paperwork to allow the proceedings to begin.

Neither Kumba nor Mittal would be drawn on when the arbitration process would start, but it was expected that it should begin before the end of the year.

For the time being, Kumba would supply iron-ore to Mittal from the Sishen mine in terms of an interim pricing agreement, which was concluded between the parties in December 2012.

Under the deal, which was struck with the aid of mediation from the Department of Trade and Industry, Kumba would sell a maximum of 4.8-million tons of iron-ore, with a lump-to-fines ratio of 60:40, at a weighted average price of \$65/t until the end of 2013.