

There is no SAA guarantee - Nedbank

Nedbank, one of four banks to have given South African Airways (SAA) a loan against a R5bn government guarantee being challenged by competitor airline Comair, surprised the High Court in Pretoria on Thursday, 7 May, with a technical argument that the guarantee did not exist, and that there were in fact four separate guarantees for four loans from different banks.



On the second day of the hearing, which began on Tuesday, counsel for Nedbank, Matthew Chaskalson, said in September 2012, the finance minister had merely made a commitment to grant a government guarantee of R5.006bn to the public enterprises minister. But without a lender there was no guarantee, he said.

Chaskalson said until SAA had taken loan offers from banks to the finance minister for approval and the minister had given a guarantee for a specific loan, there was no guarantee. And if there was no guarantee for R5.006bn, Comair was effectively challenging a guarantee that did not exist, making the company's application a waste of the court's time.

The case before Judge Hans Fabricius dates back to 2013 when JSE-listed Comair, the British Airways franchisee that operates kulula.com, challenged the R5bn guarantee given to the national carrier and began legal proceedings. Comair argues that the guarantees given to SAA are bail-outs and contravene policies and laws such as the Domestic Aviation Transport Policy, the Public Finance Management Act and the Constitution.

On Tuesday, Comair argued that the government was using the guarantees as a device to circumvent the parliamentary process of granting funding and using commercial banks to raise funds for SAA, which it would eventually pay on behalf of the airline.

The state-run airline should rather be recapitalised, a decision that would have to be tabled in Parliament, according to Comair.

Chaskalson said there were four guarantees given to SAA: one received from Nedbank for R1.8bn, one from Absa for R1.7bn and two from Standard Bank and Citibank for R1.5bn each. "Before an individual decision to issue a guarantee, S has to go back to Treasury ... the decision is taken when a specific guarantee is given."

Legal counsel for Comair, David Unterhalter SC, had argued on Tuesday that SAA would never be able to meet its debt obligations and was instead raising debt against fresh guarantees to pay for interest on older debt.

Comair argued that other alternatives such as putting SAA into business rescue or recapitalising it - a decision which would

have had to be tabled in Parliament - were not sufficiently explored by then finance minister Pravin Gordhan.

However, Adv Jeremy Gauntlett, representing the finance and public enterprises ministers, argued that at the time of the decision to grant the R5bn guarantee, SAA's financial position was "dire" and the finance minister could not have "rationally decided" anything else other than granting SAA a government guarantee.

Gauntlett said the decision to approve the guarantee was taken in view of socioeconomic considerations such as the airline's tourism contribution and flying to destinations that "a more prestigious airline would fly to".

Gauntlett argued that "money giving" was not only for Parliament but could also be given by the minister indirectly through a guarantee. He said that the Constitution authorised the use of guarantees and that they were an essential "constitutional tool for running the country".

The finance minister "put good money after bad" because he could not let go of something that had been there for more than 60 years, Gauntlett said.

Counsel for SAA, Hamilton Maenetje, echoed Mr Gauntlett's argument yesterday, saying in cases where alternatives such as a recapitalisation were not readily available for SAA, there was no question that the option chosen, to give SAA a guarantee, was the rational option and relevant to the prevailing circumstances.

Comair voiced its discontent when a further R6.5bn guarantee was given to SAA in February.

Source: Business Day

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