IAN FLETCHER INTERNATIONAL INSOLVENCY LAW MOOT 2026

NUZILIA HIGH COURT (COMMERCIAL & BANKRUPTCY DIVISION)

In the matter of:

GreenEarth Mining plc (GEM plc)	
Applicant / Foreign Representative	
Vs.	Case No. 26-1245
Nuzilian Banking Syndicate	
Respondents	

I. INTRODUCTION

1. This is a case before the High Court of Nuzilia, exercising its jurisdiction in international insolvency and restructuring matters as a court of first instance. The governing statute is the Nuzilia Insolvency Act (the "NIA"), which incorporates the UNCITRAL Model Law on Cross-Border Insolvency 1997 ("Model Law"). Unless otherwise stated, Nuzilia has adopted the Model Law without material modification.

2. Nuzilia has adopted the public-policy exception in Article 6 of the Model Law without modification. It has **not** adopted either the UNCITRAL Model Law on Enterprise Group Insolvency (2019) or the UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments (2018).

3. The Court is asked to determine whether it should recognise an English restructuring proceeding and grant relief in aid of that proceeding. The Court must also determine whether any such relief should be refused or limited on grounds of Nuzilian public policy.

II. THE GREENEARTH GROUP

4. **GreenEarth Mining plc** ("GEM plc") is a company incorporated in England and Wales and listed on the London Metals Exchange. It is the ultimate holding company of a vertically integrated transnational mining group engaged in the extraction, processing, transportation, and sale of copper and related minerals (the "GEM Group").

5. The GEM Group operates through a network of wholly owned and majority-owned subsidiaries spanning extraction, logistics, processing, and sales. The Group's corporate structure was designed to centralise financing and strategic risk at parent-company level while allocating operational activity to jurisdiction-specific subsidiaries.
6. The principal operating subsidiaries of GEM plc are:
    a. **GEM Bhutanor Ltd**, incorporated in Bhutanor, which operates an open-pit copper mine and associated tailings storage facility located adjacent to a nationally protected environmental park; and
    b. **GEM Aggregatia GmbH**, incorporated in Aggregatia, which manages processing contracts, EU-wide logistics, and long-term supply agreements with downstream industrial purchasers.
7. GEM plc exercises extensive oversight over its subsidiaries. Strategic planning, environmental compliance policies, group-wide insurance arrangements, hedging, and capital expenditures in excess of USD 5 million are approved by a group executive committee based in London. Senior executives of the subsidiaries report directly to GEM plc, and several directors serve concurrently at both parent and subsidiary level.
8. Although the operating assets of the GEM Group are held primarily by its subsidiaries, key financing, risk-management, and governance functions are centralised at GEM plc. Public disclosures made by GEM plc repeatedly described the Group as operating an integrated business under unified strategic management and represented that major operational, environmental, and financial risks were managed on a group-wide basis.

9. Since 2023, however, a substantial proportion of the Group's day-to-day treasury management, cash-pooling arrangements, procurement functions, and creditor negotiations have been coordinated through a regional management office located in Nuzilia. Several key lenders, including the Nuzilian Syndicate, dealt principally with senior executives based in Nuzilia. Certain public communications issued during the period immediately preceding the restructuring described Nuzilia as the Group's principal operational and financial hub.

10. Despite this, GEM plc maintained a permanent office in London employing approximately 40 staff responsible for treasury operations, investor relations, legal affairs, financing activities, and group governance. Those activities were continuing at the time the restructuring plan was commenced.

III. CAPITAL STRUCTURE AND FINANCING

11. The growth and expansion of the GEM Group were financed through a layered capital structure intended to provide long term stability and access to international capital markets.

12. In 2021, GEM plc issued USD 300 million in senior unsecured notes governed by English law. The notes are widely held by institutional investors and are subject to an exclusive jurisdiction clause in favour of the English courts. The proceeds were earmarked for the expansion of extractive capacity and environmental management infrastructure at the Bhutanor site.

13. In parallel, GEM plc entered into USD 50 million syndicated loan facilities with a consortium of banks incorporated and operating in Nuzilia (the "Nuzilian Syndicate"). These facilities are governed by Nuzilian law and subject to the exclusive jurisdiction of the courts of Nuzilia. The loans are secured solely by certain receivables and cash-management arrangements of GEM plc and do not benefit from security over the mining operations, processing facilities, equipment, inventory, real property, or other tangible operating assets owned by the Group's foreign subsidiaries.
14. All funds raised by GEM plc through the unsecured notes and the Nuzilian loan facilities were advanced to Group subsidiaries through a series of inter-company loans. In communications with creditors, GEM plc characterised the financing structure as reflecting the integrated nature of the GEM Group's operations and emphasised that funds raised at parent-company level were deployed across the Group in accordance with centrally determined strategic priorities.
15. As a result, creditors of GEM plc understood that the proceeds of both the unsecured notes and the Nuzilian facilities would be used to support the operations and development of the Group as a whole, including the Bhutanor and Aggregatia businesses, rather than being confined to the activities of GEM plc itself.

IV. THE ENVIRONMENTAL INCIDENT IN BHUTANOR

16. In September 2024, a partial failure of the tailings storage facility operated by GEM Bhutanor Ltd resulted in the release of mining waste into the adjacent protected national park.
17. The incident caused extensive and lasting environmental damage, including contamination of soil and waterways relied upon by local communities and protected wildlife.
18. Following an investigation, the Environmental Authority of Bhutanor issued:
    a. a remediation order against GEM Bhutanor Ltd in the amount of USD 80 million; and
    b. an "ecological integrity levy" of USD 40 million against GEM plc, on the basis that it exercised strategic and operational control over the Bhutanor operations.
19. Civil proceedings were commenced in the courts of Bhutanor by affected residents and by a public-interest environmental NGO. The claims are founded on a constitutional right to environmental integrity, recognised as a fundamental and non-derogable right under the *Constitution of Bhutanor*. The residents and NGO claimants seek compensatory relief estimated to exceed USD 180 million.
20. The residents, NGO claimants, and Bhutanorian authorities collectively assert claims and liabilities arising from the incident in excess of USD 300 million. The claimants contend that GEM plc bears direct responsibility by reason of its centralised oversight of environmental compliance, operational risk management, and capital-investment decisions relating to the Bhutanor operations.

21. National law (Environmental Protection Act 2010, article 15) expressly provides that foreign judgments or proceedings incompatible with the protection of environmental integrity shall not be recognised or enforced within Bhutanor.

V. THE ENGLISH RESTRUCTURING PLAN

22. In early 2025, GEM plc initiated restructuring proceedings in England under Part 26A of the Companies Act 2006.
23. The restructuring plan was formally proposed by GEM plc alone. No subsidiary of the GEM Group was a plan company or a direct applicant. Nevertheless, the plan expressly addressed liabilities arising from the operations of GEM Bhutanor Ltd, restructured intercompany obligations throughout the Group, and was presented to the English court as necessary to preserve the GEM Group as an integrated economic enterprise.
24. The English High Court sanctioned the restructuring plan (the "English Plan"), which included, *inter alia*:
    a. a cross-class cramdown of the English law governed notes and the Nuzilian law governed syndicated loans;
    b. a moratorium and stay on the pursuit of environmental, tort, and regulatory claims against GEM plc and, insofar as such claims constitute provable debts, against its subsidiaries;
    c. non-consensual third-party releases in favour of directors, officers, senior employees, and selected commercial counterparties of the GEM Group in

exchange for a combination of value-contributing commitments, including:

   i. the continued provision of services by senior management critical to the stabilisation and ongoing operation of the Group during and after the restructuring;
   ii. the waiver or subordination of existing indemnity, bonus, or severance entitlements that would otherwise rank as unsecured claims against GEM plc;
   iii. the agreement of certain commercial counterparties to continue supplying goods, logistics, insurance, and processing services on amended terms notwithstanding existing termination rights;
   iv. the deferral of payment obligations under pre-existing contracts and the extension of favourable terms intended to preserve going-concern value; and
   v. the facilitation of new debtor-in-possession-style liquidity and trade credit arrangements, which the company asserted were conditional upon the availability of the releases;

d. an indemnity undertaking by GEM plc in favour of its directors, officers, and employees for liabilities “arising in any jurisdiction” in connection with acts or omissions relating to the Bhutanor operations; and
e. a restructuring of intercompany debts designed to preserve operational continuity across the Group.

25. In support of sanction, GEM plc submitted that the value available to creditors depended substantially upon the continued operation of the Group as a whole

and that the restructuring should be assessed by reference to its ability to preserve group-wide enterprise value.

26. Environmental claimants in Bhutanor were not entitled to vote on the English Plan, were not convened as a class, and did not otherwise participate directly in the restructuring proceedings. GEM plc contended that such claims arose under Bhutanor public and constitutional law; were contingent, unliquidated, and non-financial in nature at the time of the Plan; and did not constitute claims against the plan company capable of compromise under Part 26A of the Companies Act 2006.

27. The English court accepted, for the purposes of sanction, that the environmental claimants fell outside the relevant creditor classes and that their interests could be addressed indirectly through the stay, release, and indemnity provisions of the Plan.

28. As a consequence, claims and potential liabilities arising from the Bhutanor incident exceeding USD 180 million were neither represented within any voting class nor subjected to direct valuation during the sanction proceedings. No mechanism was established for those claimants to be heard during the class constitution process. Additionally, the English Plan purported to stay enforcement of the remediation order against GEM Bhutanor Ltd and the ecological integrity levy against GEM plc.

VI. REACTIONS ABROAD

29. The authorities of Bhutanor have publicly declared that the indemnity and release provisions of the English Plan undermine constitutional requirements of accountability and deterrence in environmental matters.
30. The High Court of Bhutanor has issued a declaratory judgment stating that foreign insolvency or restructuring plans purporting to extinguish, limit, or suspend constitutional and environmental claims will not be recognised or enforced in Bhutanor.

VII. APPLICATION IN NUZILIA

31. The foreign representative of GEM plc has applied to the High Court of Nuzilia for recognition of the English restructuring. The foreign representative contends that the proceeding should be recognised as a foreign main proceeding. In the alternative, the foreign representative submits that, if the Court concludes that GEM plc's centre of main interests is not located in England, the proceeding should nevertheless be recognised as a foreign non-main proceeding on the basis that GEM plc maintains an establishment in England.
32. In addition to any relief arising automatically upon recognition, the foreign representative seeks:
    a. a stay of proceedings in Nuzilia against GEM plc and its assets; and
    b. an order giving effect in Nuzilia to the compromise, discharge, stay, release, and indemnity provisions contained in the English Plan, including as against the Nuzilian Syndicate.

33. The Nuzilian Syndicate opposes the application. It argues, *inter alia*, that:

a. the English Plan is not sufficiently collective, as environmental claimants were excluded from meaningful participation;

b. enforcement would be manifestly contrary to Nuzilian public policy insofar as the Plan facilitates the avoidance of substantial environmental liabilities and shields directors through broad indemnities; and

c. the English Plan cannot affect the Nuzilian-law governed loans, given Nuzilia's adherence to the rule in *Gibbs*, which was not drawn to the attention of the English court.

34. The foreign representative responds that:

a. the objectives of the Model Law, including cooperation between courts, legal certainty for cross-border trade and investment, and the fair and efficient administration of cross-border insolvencies, favour recognition of the English restructuring as a foreign proceeding and the grant of assistance in aid of that proceeding. The principle of modified universalism supports a centralised resolution of the GEM Group's financial distress through the English process, and disfavours piecemeal enforcement actions by individual creditors in multiple jurisdictions;

b. any reliance on the public-policy exception in Article 6 of the Model Law must be construed narrowly and applied only in exceptional circumstances, and does not justify refusal of recognition or relief merely because the English Plan adopts restructuring techniques unfamiliar to, or more expansive than, those available under Nuzilian law. Any concerns regarding the participation of environmental claimants relate to matters considered by the English court during the sanction process and do not justify refusal of recognition or relief under the Model Law.

c. refusal or restriction of relief would encourage opportunistic and value-destructive hold-out behaviour by individual creditors, undermine the effectiveness of court-sanctioned restructuring plans, and jeopardise the prospects of a comprehensive and coordinated group-wide restructuring.

VII. ISSUES BEFORE THE COURT

35. The High Court of Nuzilia is asked to determine the following issues:

a. Whether the English restructuring qualifies for recognition as a foreign main or non-main proceeding under the Model Law and, if recognised, whether the Court should grant relief giving effect in Nuzilia to the English Plan, having regard, *inter alia*, to:

    i. the collective nature of the English restructuring proceedings;

    ii. the Model Law rules regulating the recognition of foreign proceedings, and particularly articles 7, 17, 20 and 21;

    iii. the governing law of the Nuzilian syndicated loans and Nuzilia's adherence to the rule in *Gibbs*.

b. Whether recognition or relief should be refused or limited on the ground that the treatment of environmental claims, non-consensual third-party releases, and director-and-officer indemnities is manifestly contrary to Nuzilian public policy.