

## **PRESS SUMMARY**

### **MUNICÍPIO DE MARIANA**

**And the Municipality Claimants identified in the Claim Form**

**v**

**BHP GROUP (UK) LIMITED**

**BHP GROUP LIMITED**

**NOTE: This summary is provided to help in understand the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: <https://caselaw.nationalarchives.gov.uk/>**

1. The Municipality Claimants ('MCs') filed an application for criminal contempt against the Defendants (together, 'BHP') on 7 October 2024 ('the Contempt Application'). BHP sought to strike out the application ('the Strike Out Application'). This is the judgment in respect of the Strike Out Application. The Strike Out Application was dismissed, meaning that the application for criminal contempt can proceed to a full hearing.

#### Background

2. The underlying dispute relates to the Fundão Dam collapse, in southeast Brazil. More detail is set out in the earlier judgment of the Court of Appeal at [\[2022\] EWCA Civ 951](#). On 5 November 2015 Brazil suffered its worst ever environmental disaster when the Fundão Dam collapsed, releasing around 40 million cubic metres of tailings from iron ore mining. The collapse and flood killed 19 people, destroyed entire villages, and had a widespread impact on numerous individuals and communities, not just locally but as a result of the damage to the River Doce system over its entire course to the sea some 400 miles away. The Brazilian public prosecutor has estimated the cost of remediation and compensation at a minimum of R\$155 billion, about £25 billion at today's exchange rates. In these proceedings over 600,000 claimants seek compensation for losses caused by the disaster from the Defendants ('the Main Proceedings').
3. At the heart of the Contempt Application is a claim brought by the Brazilian Mining Institute ('IBRAM' and 'the IBRAM Claim') in the Brazilian Supreme Court which hears constitutional matters (the 'STF'). IBRAM is a Brazilian private trade organisation whose object amongst other things is to represent and promote the Brazilian mining industry. A subsidiary of BHP, BHP Brasil, is a member of IBRAM. It is said by the MCs that the IBRAM Claim was procured by BHP and was brought pursuant to an agreement by which BHP committed to funding the claim in full. It is said that this was done, together with interim relief sought, with the express intent to block the MCs right of access to justice and legal assistance before this Court.
4. It was common ground that the IBRAM Claim cannot be withdrawn (even by IBRAM).

### The Issues on the Strike Out Application

5. Following the issue of the Contempt Application, the MCs filed an anti-suit injunction ('ASI Application') seeking to prevent BHP and Vale from taking any further steps to promote or encourage the IBRAM Claim. Following various exchanges, BHP acceded to the ASI Application on 22 July 2024 and gave undertakings to the Court, incorporated into a consent order (the 'Consent Order'). BHP undertook to refrain from performing "*any steps to pursue or prosecute or progress or encourage or otherwise assist, including but not limited to the provision of financial assistance, in*" the IBRAM Claim. BHP also undertook "*to procure that BHP Brasil will request that IBRAM does not take any further action to pursue the IBRAM Interim Relief Claim.*" It is not argued in the Contempt Application that BHP is in breach of the undertakings given in the Consent Order.
6. BHP argued that (1) the Contempt Application discloses no reasonable grounds for bringing criminal contempt proceedings; (2) the Contempt Application is an abuse of process because (i) it is an abusive attempt to relitigate matters that were disposed of by the Consent Order; (ii) it does not serve the public interest; and (iii) the MCs (and/or their lawyers, Pogust Goodhead ('PG'), are not appropriate guardians of the public interest.

### The Court's Decision

7. The Court decided:
  - (1) insofar as it were to be established at a full hearing that the IBRAM Claim, with accompanying Interim Relief sought, was intentionally procured and funded by BHP for the purpose of blocking the MCs' access to this Court in the Main Proceedings, that is in principle capable of constituting a criminal contempt of court, irrespective of the lawfulness of the arrangement by which the IBRAM Claim was procured and has been funded, and the lawfulness of the IBRAM Claim itself;
  - (2) there are reasonable grounds to argue that BHP's strategy in procuring and funding the (unstoppable) IBRAM Claim, together with interim relief seeking to block access between the MCs and their lawyers, was specifically designed with the purpose, as alleged, of interfering with the administration of justice in these Courts (see paragraphs 39 – 66). The existence of the anti-suit injunction jurisdiction does not oust the criminal contempt jurisdiction (see paragraphs 67-73);
  - (3) bringing the Contempt Application was not abusive re-litigation (see paragraphs 74 – 93, and in particular paragraphs 89 onwards);
  - (4) bringing the Contempt Application serves the public interest. Part of the reasoning included the seriousness of the allegation if this contempt were proven (see paragraphs 94-99);
  - (5) BHP's argument that the MCs and/or PG were not appropriate guardians of the public interest was rejected (see paragraphs 100-112).

### What Next

8. The Contempt Application can proceed to be heard at a full hearing. It will be heard by the Divisional Court.