

IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN

CASE NO.: D4472/2023

In the matter between:

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)	First Applicant
TONGAAT HULETT SUGAR SOUTH AFRICA (PROPRIETARY) LIMITED (IN BUSINESS RESCUE)	Second Applicant
TREVOR JOHN MURGATROYD N.O.	Third Applicant
PETRUS FRANCOIS VAN DEN STEEN N.O.	Fourth Applicant
GERHARD CONRAD ALBERTYN N.O.	Fifth Applicant
and	
SOUTH AFRICAN SUGAR ASSOCIATION	First Respondent
S.A. SUGAR EXPORT CORPORATION (PROPRIETARY) LIMITED	Second Respondent
MINISTER OF TRADE, INDUSTRY AND COMPETITION	Third Respondent
SOUTH AFRICAN SUGAR MILLERS' ASSOCIATION NPC	Fourth Respondent
SOUTH AFRICAN CANE GROWERS' ASSOCIATION NPC	Fifth Respondent
SOUTH AFRICAN FARMERS' DEVELOPMENT ASSOCIATION NPC	Sixth Respondent
RCL FOODS SUGAR & MILLING (PROPRIETARY) LIMITED	Seventh Respondent
ILLOVO SUGAR (SOUTH AFRICA) (PROPRIETARY) LIMITED	Eighth Respondent
UMFOLOZI SUGAR MILL (PROPRIETARY) LIMITED	Ninth Respondent
GLEDHOW SUGAR COMPANY (PROPRIETARY) LIMITED	Tenth Respondent



HARRY SIDNEY SPAIN N.O	Eleventh Respondent
UCL COMPANY (PROPRIETARY) LIMITED (PROPRIETARY) LIMITED	Twelfth Respondent
ALL REGISTERED GROWERS	Thirteenth to Twenty-Three Thousandth Respondents
THE AFFECTED PERSONS IN THL'S BUSINESS RESCUE	Twenty-Three Thousand and First Respondents and Further Respondents

SUPPLEMENTARY FOUNDING AFFIDAVIT

I, the undersigned,

PETRUS FRANCOIS VAN DEN STEEN

do hereby make oath and say –

- 1 I am an adult male, and a director of Metis Strategic Advisors (Proprietary) Limited ("**Metis**"). Metis has its registered address situate at Jindal Africa Building, 22 Kildoon Road, Bryanston, Johannesburg.
- 2 I am the deponent to the applicants' founding affidavit in this application. The facts contained in this affidavit are both true and correct.
- 3 Part A of the above application has been set down on the unopposed roll of the above Honourable Court for 13 June 2023.
- 4 As appears from paragraph 35 of the founding affidavit, the members of the South African sugar industry have an interest in the relief sought in Part B of



this application. Accordingly, the members comprising the South African sugar industry must be joined in the application, as must all affected persons to the first applicant's business rescue.

- 5 Because the thirteenth to twenty-three thousandth respondents are the members of SACGA and SAFDA who are all of the registered sugar cane growers, they are principal parties to the SI Agreement and therefore are necessary parties to this application.

- 6 The twenty-three thousand and first respondent and further respondents are the affected persons in THL's business rescue. They are entitled to be joined in this application pursuant to the provisions of section 128 of the Companies Act, as read together with sections 144(3)(b) and (f), 145(1)(a),(b) and (c), 145(2)(a) and 146(a),(b),(c) and (d) of the Companies Act. They are also joined because it will affect the conduct (and, possibly, the outcome) of THL's business rescue in respect of which they have an interest.

- 7 Given the sheer number of sugar industry participants and affected persons, they cannot all be personally cited and served. The applicants accordingly seek an order for substituted service in respect of those interested parties, in Part A of the notice of motion. The applicants make out their case for substituted service of the application in paragraphs 199 to 204 of the founding affidavit.

- 8 The seventh respondent (RCL) has complained that the applicants ought to have launched this application as an urgent application. The applicants do not



agree that it was necessary for this application to be launched as a matter of urgency, however, they (the applicants) recognise the importance of the matter and agreed to refer the matter to case management in order to expedite the proceedings. In this regard, the Honourable Justice Vahed has been appointed as case manager.

- 9 Subsequent to service of the application, the matter has become widely publicised, as appears from a sample of media articles attached as "A" hereto, and the parties to be joined have, in all likelihood, already become aware of it, either from the press or through the relevant industry associations. The applicants also recognise that there is a need for the matter to progress as expeditiously as possible.
- 10 In addition, the affected persons in the business rescue of the first applicant have already been given notice of this application and an opportunity to request the application papers by way of -
- 10.1 publication in a SENS announcement of the first applicant dated 5 May 2023, attached marked "B1";
- 10.2 a notice published -
- 10.2.1 on the first applicant's website -
(<https://www.tongaat.com/business-rescue/>); and



10.2.2 via email notice to affected persons,

a copy of which is attached marked "B2".

11 In the notice of motion, and in the annexure thereto, the applicants proposed that in the event of Part A for substituted service being granted, any of the thirteenth and further respondents would be entitled to -

11.1 request and obtain a full copy of this application within 15 business days of publication of the substituted service notice;

11.2 notify the applicants' attorney in writing within 15 days of receipt of the application of such intention to oppose; and

11.3 file an answering affidavit, 15 days after they have given notice of their intention to oppose the application.

12 Because of the importance of the matter, and because the parties to be joined are likely already aware of the application, the applicants submit that it is necessary and appropriate to curtail the time periods referred to in paragraph 11 and its sub paragraphs above as follows on the basis that any of the thirteenth and further respondents would be entitled to -

12.1 request and obtain a full copy of this application within five (5) business days of publication of the substituted service notice;

- 12.2 notify the applicants' attorney in writing, within five (5) business days of receipt of the application of such intention to oppose; and
- 12.3 file an answering affidavit, fifteen (15) business days after they have given notice of their intention to oppose the application.
- 13 The aggregate of the time periods in paragraphs 12.1 and 12.2 is the usual number of days a party is permitted to oppose an application, and the time period in paragraph 12.3 is the usual time that a party is permitted to deliver an answering affidavit in motion proceedings.
- 14 Attached marked "**C**" is an amended Notice of Motion and annexure "NOM1" which reflects the applicants' proposed amendments in markup.
- 15 Attached marked "**D**" is the draft order which will be presented to the above Honourable Court when Part A of this application is heard on 13 June 2023.

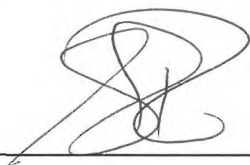


PETRUS FRANCOIS VAN DEN STEEN

I certify that this affidavit was signed and sworn to before me at DAINTERN on this the 6TH day of June 2023 by the deponent who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath,



considered this oath to be binding on his conscience and uttered the following words:
'I swear that the contents of this affidavit are both true and correct, so help me God.'



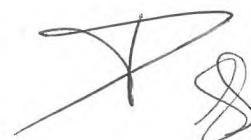
COMMISSIONER OF OATHS

Name:

Address:

Capacity:

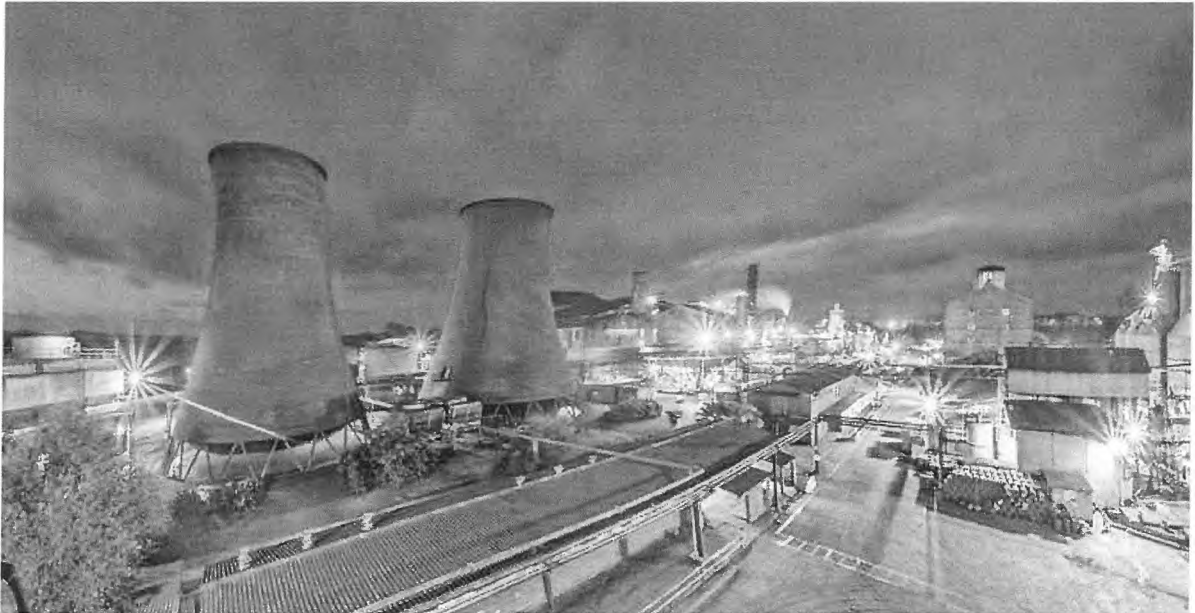
Mrs Gillian Patricia Terre'Blanche
Commissioner of Oaths
Ref No: 14/12/2014 Randburg
Dainfern Golf & Residential Estate
633 Gateside Avenue
Dainfern
(011) 875-0451
Estate Administrator



Tongaat Hulett seeks legal help to protect business rescue process

northcoastcourier.co.za/207833/tongaat-hulett-seeks-legal-help-to-protect-business-rescue-process

May 12, 2023



Tongaat Hulett has taken to the courts in an attempt to protect their ongoing business rescue process.

The troubled sugar giant has recently come under fire for failing to pay more than R900-million in levies to the South African Sugar Association (SASA), which normally feed back funds into the sugar industry.

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Said default caused an industrywide loss of over R1.5-billion for the 2022/23 season.

Aside from frustration surrounding the drop in revenue, Tongaat Hulett also faced a legal battle when RCL Foods took them to the Sugar Industry Appeals Tribunal.

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RCL Foods, which owns Selati Sugar, are affected in part by the default and have argued that Tongaat Hulett's business rescue should not give them blanket exemption from industry requirements.

"The business rescue practitioners (BRPs) have taken the position that Tongaat's industry obligations are contractual in nature and can thus be suspended during business rescue proceedings

"It is our contention, supported by SASA's own view, that industry obligations are statutory and – like other statutory obligations such as income tax – cannot be unilaterally suspended," said RCL Foods.

"Non-payment has dire consequences for the viability and sustainability of the entire local sugar industry."

In response, Tongaat Hulett filed lengthy court papers in the Durban High Court earlier this month, requesting a permanent stop of RCL Foods' tribunal process and an order for them to pay costs.

The BRPs contend that forcing the company to pay levies could be "catastrophic" for the entire business rescue process and could permanently shutter the company.

This would cause widespread difficulty for the local sugar industry, where Tongaat Hulett is the biggest refiner, and would affect more than 23 000 growers countrywide.

Tongaat Hulett named all of those growers, as well as most industry stakeholders, as respondents in the court papers in an attempt to stave off legal battles until the business rescue can be completed.

RCL Foods confirmed that their tribunal action was temporarily suspended pending the outcome of the High Court application.

"Tongaat continues to trade while under business rescue, despite not meeting their redistribution or levy obligations, while all other millers and growers remain bound to the legislative framework. This approach prioritises the interests of Tongaat's lender group over legitimate interests of the industry and industry participants," said RCL Foods.

"If payment obligations under the Sugar Industry Agreement are not enforced, it follows that the industry is at risk of collapse. It is not equitable for the industry and industry participants to bear the consequences of Tongaat's non-payment."

The business rescue plan is expected on May 31.

Tongaat Hulett secures funds to operate until end June

■ [iol.co.za/business-report/economy/tonga-at-hulett-secures-funds-to-operate-until-end-june-393d681a-a1a9-4c57-b779-ee5bd83b117](https://www.iol.co.za/business-report/economy/tonga-at-hulett-secures-funds-to-operate-until-end-june-393d681a-a1a9-4c57-b779-ee5bd83b117)

Given Majola

9 May 2023

Troubled sugar refiner Tongaat Hulett, under business rescue since late last year, has secured funding to continue business operations until the end of next month.

This as its business rescue practitioners on Friday filed court papers to stave off obligations to pay outstanding levies to the SA Sugar Association for the duration of the business rescue proceedings.

RCL Foods in March took Tongaat Hulett business rescue practitioners before the Sugar Industry Appeals Tribunal due to the refiner's failure to pay outstanding levies to the SA Sugar Association.

Labour union Uasa said yesterday in a statement it was pleased to note the extension of the business plan.

"Tonga at Hulett's business rescue plan has been extended. The company believes it stands a reasonable chance of being rescued, within the meaning of section 128(1)(h) of the Companies Act, in a manner that will balance the rights and interests of all affected," it said.

More on this

- [SA Canegrowers unhappy about an 8% drop in final price of processed cane](#)
- [Sugar industry faces uncertain future, says Safda](#)
- [Tonga at Hulett's former CFO censured by JSE](#)

Uasa spokesperson Abigail Moyo said the general union supported Tongaat Hulett's management during the process because the organisation's survival was crucial to the sector.

"Despite the company's many challenges, saving jobs and ensuring the industry does not crumble is our responsibility."

She said they encouraged Tongaat Hulett's management, stakeholders, business rescue and industry partners to continue working together to save the entity as they could not tolerate any more job losses.

In April, SA Canegrowers chairperson Andrew Russell said Tongaat Hulett's failure to pay more than R900 million due to the SA Sugar Association at the end of March, and a further default by the Gledhow mill, which was also in business rescue, had resulted in an 8% drop in the final RV price (the price that growers receive for the cane processed) for the 2022/2023 season.

Russell said at the time they were disappointed by these defaults, which in total would cost the industry R1.5 billion, of which R1bn was deducted from the growers' proceeds (the RV price).

"More than 20 000 small-scale growers will have to carry their share of the cost of these decisions, with the RV price (the final revenue determined for growers) dropping by R424 per ton at the end of the season. The resulting decline in revenue now threatens the livelihoods of thousands of small-scale growers and the workers they employ," Russell said at the time.

On Friday, Tongaat Hulett's business rescue practitioners said in an update on their website that it had – via Werksmans Attorneys – filed papers at the Durban High Court seeking to suspend, for the duration of the business rescue proceedings, any obligation to pay outstanding levies to the SA Sugar Association.

They also want the court to strike out or permanently stay the application instituted by RCL Foods before the Sugar Industry Appeals Tribunal, on or about March 31, 2023, ordering RCL Foods (Proprietary) Limited to pay the applicants' costs in respect of the Sugar Appeals.

The named respondents in the court application are SA Sugar Association; SA Sugar Export Corporation; Trade and Industry Minister Ebrahim Patel; SA Sugar Millers' Association; SA Cane Growers' Association; SA Farmers' Development Association; RCL Foods Sugar & Milling; Illovo Sugar (South Africa); Umfolozi Sugar Mill; Gledhow Sugar; Harry Sidney Spain; UCL Company; all registered growers; and, the affected persons in THL's business rescue as defined in section 128 of the Act.

BUSINESS REPORT

Tongaat Hulett business rescue practitioners at war with industry

sw sundayworld.co.za/news/business/tongaat-hulett-business-rescue-practitioners-at-war-with-industry/

May 14, 2023

Business

By Sunday World

14th May 2023



The decision by the three Tongaat Hulett business rescue practitioners (BRPs) in late February to halt payments to a vast array of sugar stake-holders has placed them at war with the wider community of the sugar industry.

This follows the failure of the BRPs to fulfil Tongaat's payment obligations of up to R1.4-billion to the South African Sugar Association (Sasa), including 1 125 large-scale commercial sugarcane farmers and 20 700 small-scale sugarcane farmers, most of whom are black. The sugar industry estimates that 1-million people rely on it for their livelihood.

"To temporarily insulate Tongaat Hulett from onerous obligations that would prevent it from being rescued, on 24 February 2023, the BRPs determined to suspend all the Tongaat Hulett's payment obligations arising under the Sugar Industry Agreement (SIA) for the duration of the business rescue proceedings in terms of section 136(2) of the Companies Act," Tongaat BRP Petrus van den Steen said in court papers dated April 26 and filed with the Durban High Court.

The SIA is a revenue-sharing agreement between all the sugar industry participants.

“Whilst this is good for the sustainability of the industry as a whole, Tongaat is disadvantaged by this arrangement,” the BRPs wrote.

The fact that the BRP court papers include over 23 000 sugar industry respondents reflects the widespread impact of the BRPs’ decision. The respondents included Sasa, Minister of Trade, Industry and Competition Ebrahim Patel, the South African Millers’ Association, the South African Growers’ Association, the South African Farmers’ Development Association, RCL Foods Sugar & Milling and the Illovo Sugar.

Tongaat, RCL and Illovo are South Africa’s three major sugar milling companies. The move to suspend the SIA payment obligations followed a letter of demand issued by Sasa on February 23 for Tongaat to pay R176-million.

The BRPs want the court to rule that Tongaat could temporarily halt its SIA payments while under business rescue. The BRPs said Tongaat, which employs 2 500 workers, and went into business rescue in October last year, is in financial distress.

“A substantial proportion of Tongaat’s debt – currently R1.4-billion – is owed to [Sasa], having arisen under the SIA of which R1-billion has become due during the business rescue proceedings,” the BRPs said. The BRPs believe the Companies Act contemplates obligations arising under an agreement, to which the company was a party at the commencement of the business rescue proceedings, may be suspended by the BRPs.

“It is clear from the definition of ‘agreement’, as read together with section 136(2)(a) of the Companies Act, that the legislature must have intended to empower a BRP to suspend any obligation that, if not otherwise, suspended, would make it impossible to rescue the company.”

Tongaat and the BRPs have assumed that the SIA obligations are contractual, and they can suspend them during business rescue proceedings.

However, all other major sugar industry players have opposed this stance. In response, RCL first made a submission to the Sugar Industry Appeals Tribunal regarding Tongaat on March 30.

Illovo Sugar, on April 3, indicated its support for the RCL’s proceedings. RCL have submitted that a proper interpretation of the SIA was that it was legally binding, and the BRPs could not unilaterally suspend it. In her tribunal submission, RCL managing director Michela Cutts wrote that as of November 2020, annual South African sugar production had declined by nearly 25% over 20 years, and the number of sugar cane farmers had fallen by 60% with sugar industry-related jobs reduced by 45%.

“The financial sustainability of the industry has never been more pressing, and this matter arises in this context.

“The South African Cane Growers’ Association estimates that the sugar industry may lose over R723-million in 2023 as a result of rolling blackouts,” she added. RCL believes that if the sugar industry is to avoid a total collapse, the sector must enforce the SIA urgently.

“Tongaat’s default has also resulted in a drop of the [sugarcane] price with catastrophic effects for growers, particularly small-scale growers. Small-scale growers now face the real risk of... exiting the industry.

“The BRPs have no power or right to interfere with a statutory obligation. The Companies Act does not permit Tongaat to be granted statutory exemptions by dint of a business rescue plan,” Cutts said.

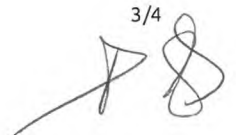
However, the Tongaat BRPs have accused the RCL of having instituted a “fatally defective” tribunal proceedings.

“RCL’s application contravenes section 133 of the Companies Act and is incompetent and impermissible. “[The BRPs] therefore seek an order striking RCL Foods’ application, alternatively permanently staying RCL’s application,” the BRPs added.

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Sunday World

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- stakeholders.
- statutory obligation
- sugar industry.
- Sugar Industry Appeals Tribunal
- Tongaat Hulett

TONGAAT HULETT LIMITED - BUSINESS RESCUE NOTICE TO SHAREHOLDERS
05 May 2023 17:10

Business rescue notice to shareholders

TONGAAT HULETT LIMITED
(Incorporated in the Republic of South Africa)
Registration number: 1892/000610/06
Share code: TON
ISIN: ZAE000096541
("Tongaat Hulett" or "Company")

BUSINESS RESCUE NOTICE TO SHAREHOLDERS

Shareholders are advised that the Company has distributed a notice to all known Affected Persons, in accordance with section 128 of the Companies Act 71 of 2008, as amended ("the Act"), read together with sections 144(3)(a), 145(1)(a) and 146(a) of the Act ("Notice").

The Notice and the supporting documentation included therein, pertains to the Notice of Motion filed at the High Court of South Africa, Kwazulu Natal Local Division, Durban, under Case No. D4472/2023 ("application"), in the matter between: the Company, Tongaat Hulett Sugar South Africa (Proprietary) Limited and the joint business rescue practitioners of the Company ("Practitioners"), and is issued to Affected Persons in accordance with the provisions set forth in sections of the Act referred to above. Shareholders are further advised that the Notice and the supporting documentation included therein, do not constitute service of the application, and the Practitioners are in the process of applying to Court for an order to direct the manner of service of the application on Affected Persons.

The aforementioned Notice and the supporting documentation included therein, is available on the Company's website, under the 'Business Rescue' tab, and accessible to Shareholders via the link: <https://www.tongaat.com/business-rescue/>

Tongaat
5 May 2023

Sponsor
PSG Capital

Date: 05-05-2023 05:10:00

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TongaatHulett

- Delivered by Email To:**
- All known Affected Persons of Tongaat Hulett Limited (in business rescue)
 - Companies and Intellectual Property Commission
- Displayed:**
- Registered office and principal place of business of the Company
- Published:**
- On the website maintained by the Company and accessible to Affected Persons
 - Availability recorded in an announcement to shareholders on the Stock Exchange News Service (SENS), released after distribution.
-

05 May 2023

NOTICE TO ALL KNOWN AFFECTED PERSONS OF TONGAAT HULETT LIMITED (in business rescue) ("Company") IN TERMS OF SECTION 128 OF THE COMPANIES ACT 71 OF 2008, AS AMENDED ("Companies Act") READ TOGETHER WITH SECTIONS 144, 145 AND 146 OF THE COMPANIES ACT

1. In accordance with section 128 of the Companies Act, read together with sections 144(3)(a), 145(1)(a) and 146(a) of the Companies Act, Affected Persons are hereby advised to consider the attached Notice ("the **Notice**").
2. The Notice pertains to the Notice of Motion filed at the High Court Of South Africa, Kwazulu Natal Local Division, Durban, under Case No.:D4472/2023 ("the **application**"), in the matter between: the Company, Tongaat Hulett Sugar South Africa (Proprietary) Limited and the joint business rescue practitioners of the Company ("the **Practitioners**"), and is issued to Affected Persons in accordance with the provisions set forth in sections of the Act referred to above. Affected Persons are notified that the attached Notice does not constitute service of the application, and the Practitioners are in the process of applying to Court for an order to direct the manner of service of the application on Affected Persons.
3. Affected Persons are further notified that the Notice of Motion and all relevant documentation and supporting annexures will be made available to all Affected Persons prior to formal service of the application upon them, on request and in the manner set out in the attached Notice.

Yours faithfully,

TJ Murgatroyd

PF van den Steen

GC Albertyn

The Joint Business Rescue Practitioners of Tongaat Hulett Limited (in business Rescue)

NOTICE IN TERMS OF SECTION 128 OF THE COMPANIES ACT 71 OF 2008 ("the Act"), READ TOGETHER WITH SECTION 144, 145 AND 146 OF THE ACT:

ALL AFFECTED PERSON IN THE BUSINESS RESCUE OF TONGAAT HULETT LIMITED (IN BUSINESS RESCUE) ("THL")

This notice is addressed to all affected persons in the business rescue process of THL.

THL and its business rescue practitioners ("the **BRPs**") have brought an application to the High Court of South Africa, KwaZulu Natal Local Division, Durban under case number D4472/2023 ("the **application**"). The following persons are the named respondents in the application -

- South African Sugar Association;
- S.A. Sugar Export Corporation (Proprietary) Limited;
- Minister Of Trade, Industry And Competition;
- South African Sugar Millers' Association NPC;
- South African Cane Growers' Association NPC;
- South African Farmers' Development Association NPC;
- RCL Foods Sugar & Milling (Proprietary) Limited;
- Illovo Sugar (South Africa) (Proprietary) Limited;
- Umfolozi Sugar Mill (Proprietary) Limited;
- Gledhow Sugar Company (Proprietary) Limited;
- Harry Sidney Spain N.O;
- UCL Company (Proprietary) Limited;
- all Registered Growers; and
- the Affected Persons in THL's Business Rescue as defined in section 128 of the Act.



In the application, the following orders are sought -

Part A:

- 1 The applicants be granted leave to give notice of the main application (being Part B of the notice of motion) by way of substituted service on all Registered Growers and the Affected Persons in THL's Business Rescue as defined in section 128 of the Act.

Part B:

- 2 Declaring that the third to fifth applicants ("the **BRPs**") are empowered to suspend, for the duration of the business rescue proceedings, any obligation of the first applicant ("THL") which arises under the Sugar Industry Agreement, 2000 ("the SI Agreement") *alternatively* any redistribution payment, and related levies and interest that become due in terms of clauses 183 and 184 of the SI Agreement, and which would otherwise become due during the business rescue proceedings;
- 3 Alternatively to paragraph 1 above and in the event that the Court finds that the obligations under the Agreement are not amenable to suspension -
 - 3.1 declaring section 136(2)(a)(i) of the Act unconstitutional and invalid insofar as its fails to provide for the suspension of regulatory charges that become due during business rescue proceedings; and
 - 3.2 reading in the words "*or regulatory regime*" after the word "*agreement*" in section 136(2)(a)(i) of the Act;
- 4 Declaring that respondents are precluded, in terms of section 133 of the Act, from bringing legal proceedings, including enforcement action, against THL in respect of any payments that are owing under the SI Agreement;
- 5 Striking out or permanently staying the application instituted by RCL Foods (Proprietary) Limited before the Sugar Industry Appeals Tribunal on about 31 March 2023;
- 6 Ordering RCL Foods (Proprietary) Limited to pay the applicants' costs in respect of the Sugar Appeals Tribunal application; and
- 7 Directing any party that opposes this application to pay the costs jointly and severally, including the cost of three counsel where three counsel have been employed.



THL and its business rescue practitioners have cited you as respondents in the application. You are therefore entitled to (i) receive a copy of the application, (ii) take independent legal advice and (iii) participate in the application.

Please contact Werksmans Attorneys (whose details are set out below) to obtain a copy of the founding papers in the application, in electronic format, at no cost to yourself should you require a copy of the application prior to formal service.

Werksmans Attorneys

Ref: Mr Trevor Boswell / Ms Simone Gast

Tel: +27 11 535 8459 / +27 535 8131

Email: sugar@werksmans.com

A handwritten signature in black ink, consisting of a stylized, cursive script that is difficult to decipher but appears to be a personal name.

IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN

CASE NO.: _____

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UCL COMPANY
(PROPRIETARY) LIMITED Twelfth Respondent

ALL REGISTERED GROWERS Thirteenth to Twenty-Three
Thousandth Respondents

THE AFFECTED PERSONS IN
THL'S BUSINESS RESCUE Twenty-Three Thousand and First
Respondents and Further Respondents

NOTICE OF MOTION

PART A: SUBSTITUTED SERVICE

TAKE NOTICE that the first to fifth applicants ("the applicants") intend to make application to this Honourable Court _____, or on a date to be arranged with the Registrar, for an order in the following terms -

A


1 The applicants are granted leave to give notice of the main application (being Part B of this notice of motion) by way of substituted service on the twelfth and further respondents in the following manner -

1.1 within five (5) days of the grant of this order in Part A -

1.1.1 the fifth and sixth respondents are directed to cause a copy of the complete founding papers to be emailed to each registered



- 1.1.2 grower registered with them, for whom they have email addresses on file;
- 1.1.3 the third to fifth applicants are directed to cause a copy of the complete founding papers to be emailed to each affected person in the first applicant's business rescue, for whom they have email addresses on file;
- 1.1.4 the first applicant and the first respondent are each directed to publish a link to the complete founding papers on their websites; and
- 1.1.5 the third to fifth applicants are directed to cause notice of the application, in the form of Annexure NOM1, in the following newspapers -
- 1.1.5.1 *Business Day*, in English;
- 1.1.5.2 The *Natal Mercury* in English and isiZulu; and
- 1.1.5.3 The *Mpumalanga News*, in English, isiZulu and siSwati.
- 2 The costs of Part A shall be costs in the main application (Part B).
- 3 Further and/or alternative relief.



PART B: MAIN APPLICATION

TAKE NOTICE that the first to fifth applicants ("the applicants") intend to make application to this Honourable Court, _____ or on a date to be arranged with the Registrar, for an order in the following terms -

B

- 1 Declaring that the third to fifth applicants ("the BRPs") are empowered to suspend, for the duration of the business rescue proceedings, any obligation of the first applicant ("**THL**") which arises under the Sugar Industry Agreement, 2000 ("the SI Agreement"); alternatively any redistribution payment, and related levies and interest that become due in terms of clauses 183 and 184 of the SI Agreement, and which would otherwise become due during the business rescue proceedings.

- 2 Alternatively to prayer B1 above and in the event that the Court finds that the obligations under the SI Agreement are not amenable to suspension -
 - 2.1 declaring section 136(2)(a)(i) of the Companies Act 71 of 2008 ("the Companies Act") unconstitutional and invalid insofar as it fails to provide for the suspension of regulatory charges that become due during business rescue proceedings; and

 - 2.2 reading in the words "*or regulatory regime*" after the word "*agreement*" in section 136(2)(a)(i) of the Companies Act.



- 3 Declaring that respondents are precluded, in terms of section 133 of the Companies Act, from bringing legal proceedings, including enforcement action, against THL in respect of any payments that are owing under the SI Agreement.
- 4 Striking out or permanently staying the application instituted by the seventh respondent before the Sugar Industry Appeals Tribunal on 31 March 2023.
- 5 Ordering the seventh respondent to pay the applicants' costs in respect of the application instituted before the Sugar Industry Appeals Tribunal on 31 March 2023.
- 6 Directing any party that opposes this application to pay the costs thereof jointly and severally, including the cost of three counsel where three counsel have been employed.
- 7 Further and/or alternative relief.

TAKE NOTICE FURTHER that the accompanying affidavit of **PETRUS FRANCOIS VAN DEN STEEN** together with the annexures thereto will be used in support of this Application.

TAKE NOTICE FURTHER that the applicant has appointed **WERKSMANS ATTORNEYS**, The Central, 96 Rivonia Road, Sandton, Johannesburg, 2196 and **EVH INC ATTORNEYS**, Unit 4, Holwood Crescent, Holwood Park, La Lucia Ridge,

A handwritten signature in black ink, consisting of a stylized, cursive script that appears to be the name of the signatory.

Umhlanga, 4319, at which addresses they will accept notice and service of all process in these proceedings.

TAKE NOTICE FURTHER that if any of the first to twelfth respondents intend opposing Part A or Part B of this application, you are required -

- (a) to notify the applicants' attorney in writing, within fifteen (15) days of receipt of this application of such intention to oppose and, in such notice, to appoint an address as referred to in rule 6 (5)(b) at which you will accept notice and service of all documents in these proceedings; and
- (b) within fifteen (15) days after you have given notice of your intention to oppose the application, to file your answering affidavits, if any;

TAKE NOTICE FURTHER that if any of the thirteenth and further respondents intend opposing Part B of the application, you are required -

- (a) to notify the applicants' attorney in writing, within five (5) days of compliance with the orders A 2.1 to 2.4 in Part A of such intention to oppose and, in such notice, to appoint an address as referred to in Rule 6 (5)(b) at which you will accept notice and service of all documents in these proceedings; and
- (b) within fifteen (15) days after you have given notice of your intention to oppose the application, to file your answering affidavits, if any.

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DATED AT JOHANNESBURG 26 APRIL 2023



WERKSMANS ATTORNEYS

Applicants' Attorneys

11th Floor, The Central

96 Rivonia Road, Sandton

Email: tboswell@werksmans.com / dhertz@werksmans.com

dandropoulos@werksmans.com / sgast@werksmans.com

Tel: +27 11 535 8459 / +27 11 535 8283 / +27 11 535 8248 / +27 11 535 8131

Ref: Mr T Boswell / Mr D Hertz / Mr D Andropoulos / Ms S Gast / **TONG7430.11**

C/O EVH INC ATTORNEYS

Unit 4, Holwood Crescent, Holwood Park

La Lucia Ridge, Umhlanga, 4319

Tel: +27 31 492 7971

Email: erik@evhinc.co.za

Ref: W2409/0005

TO:

**THE REGISTRAR OF THE
ABOVE HONOURABLE COURT
DURBAN, KWAZULU-NATAL**

AND TO:

SOUTH AFRICAN SUGAR ASSOCIATION

First Respondent

C/O **GARLICKE & BOUSFIELD**

Email: howard.stephenson@gb.co.za

**Service via email
as per agreement
between the parties**

AND TO:

**S.A. SUGAR EXPORT CORPORATION
(PROPRIETARY) LIMITED**

Second Respondent

170 Flanders Drive, Mount Edgecombe, 4300

Service via Sheriff

AND TO:

MINISTER OF TRADE AND INDUSTRY

Third Respondent

77 Meintjies Street, Sunnyside, Pretoria

Service via Sheriff



AND TO:
**SOUTH AFRICAN SUGAR MILLERS'
ASSOCIATION NPC**
Fourth Respondent
170 Flanders Drive, Mount Edgecombe, 4300
Tel: +27 31 508 7300
Email: sasmal@sasa.org.za

Service via Sheriff

AND TO:
**SOUTH AFRICAN CANE GROWERS'
ASSOCIATION NPC**
Fifth Respondent
170 Flanders Drive, Mount Edgecombe, 4300
Tel: +27 31 508 7200
Email: central@canegrowers.co.za

Service via Sheriff

AND TO:
**SOUTH AFRICAN FARMERS'
DEVELOPMENT ASSOCIATION NPC**
Sixth Respondent
170 Flanders Drive, Mount Edgecombe, 4300
Tel: +27 31 508 7283
Email: info@sa-fda.org.za

Service via Sheriff

AND TO:
**RCL FOODS SUGAR & MILLING
(PROPRIETARY) LIMITED**
C/O WEBBER WENTZEL ATTORNEYS
Seventh Respondent
Email: prelisha.singh@webberwentzel.com /
lara.kahn@webberwentzel.com /
lubumba.kamukwamba@webberwentzel.com

**Service via email
as per agreement
between the parties**

AND TO:
**ILLOVO SUGAR (SOUTH AFRICA)
(PROPRIETARY) LIMITED**
C/O COX YEATS ATTORNEYS
Eighth Respondent
Email: TScheepers@coxyeats.co.za /
LMapiki@coxyeats.co.za /
JRodd@coxyeats.co.za

**Service via email
as per agreement
between the parties**



AND TO:
UMFOLOZI SUGAR MILL (PROPRIETARY) LIMITED
Ninth Respondent
Corner Mill Road and Club Lane, Riverview,
KwaZulu-Natal 3930

Service via Sheriff

AND TO:
**GLEDDHOW SUGAR COMPANY
(PROPRIETARY) LIMITED**
Tenth Respondent
1 Gledhow Mill Road, Kwa-Dukuza, Kwa-Dukuza
Kwa-Zulu Natal, 4450

Service via Sheriff

AND TO:
HARRY SIDNEY SPAIN N.O
Eleventh Respondent
Unit 2 Hertford, 747 Musgrave Road, Durban

Service via Sheriff

AND TO:
**UCL COMPANY (PROPRIETARY) LIMITED
(PROPRIETARY) LIMITED**
Twelfth Respondent
16 Noodsberg Road, Dalton, KwaZulu-Natal

Service via Sheriff

AND TO:
ALL REGISTERED GROWERS
Thirteenth to Twenty-Three
Thousandth Respondents

Substituted Service

AND TO:
**THE AFFECTED PERSONS IN
THL'S BUSINESS RESCUE**
Twenty-Three Thousand and First
Respondents and Further Respondents

Substituted Service

NOTICE TO:**ALL REGISTERED GROWERS****ALL AFFECTED PERSON IN THE BUSINESS RESCUE OF TONGAAT HULETT LIMITED (IN BUSINESS RESCUE) ("THL")**

This notice is addressed to all registered sugar cane growers, and to all affected persons in the business rescue process of THL.

This notice is published in this newspaper pursuant to an order granted by the High Court of South Africa, KwaZulu Natal Local Division, Durban on _____ 2023.

Take notice that the THL and its business rescue practitioners have brought an application to the High Court of South Africa, KwaZulu Natal Local Division, Durban under case number D4472/2023, seeking the following order -

- 1 Declaring that the third to fifth applicants ("the BRPs") are empowered to suspend, for the duration of the business rescue proceedings, any obligation of the first applicant ("THL") which arises under the Sugar Industry Agreement, 2000 ("the SI Agreement") *alternatively* any redistribution payment, and related levies and interest that become due in terms of clauses 183 and 184 of the SI Agreement, and which would otherwise become due during the business rescue proceedings;
- 2 Alternatively to paragraph 1 above and in the event that the Court finds that the obligations under the Agreement are not amenable to suspension -
 - 2.1 declaring section 136(2)(a)(i) of the Companies Act 71 of 2008 ("Companies Act") unconstitutional and invalid insofar as its fails to provide for the suspension of regulatory charges that become due during business rescue proceedings; and
 - 2.2 reading in the words "*or regulatory regime*" after the word "*agreement*" in section 136(2)(a)(i) of the Companies Act;
- 3 Declaring that respondents are precluded, in terms of section 133 of the Companies Act, from bringing legal proceedings, including enforcement action, against THL in respect of any payments that are owing under the SI Agreement;
- 4 Striking out or permanently staying the application instituted by RCL Foods (Proprietary) Limited before the Sugar Industry Appeals Tribunal on about 31 March 2023;
- 5 Ordering RCL Foods (Proprietary) Limited to pay the applicants' costs in respect of the Sugar Appeals Tribunal application; and



- 6 Directing any party that opposes this application to pay the costs jointly and severally, including the cost of three counsel where three counsel have been employed.

Take notice further that THL and its business rescue practitioners have cited you as respondents in the application. You are therefore entitled to (i) receive a copy of the application, (ii) take independent legal advice and (iii) participate in the application. Please contact THL and the business rescue practitioners attorneys, Werksmans Attorneys, within ~~fifteen-five (155)~~ five (5) business days of publication of this notice, to obtain a copy of the founding papers in the application, in electronic format, at no cost to yourself.

Their details are:

Werksmans Attorneys

Ref: Trevor Boswell / Simone Gast

Tel: +27 11 535 8459 / +27 535 8131

Email: tboswell@werksmans.com / sgastsugar@werksmans.com

Should you elect to oppose the application, you may file notice of intention to oppose the application by no later than _____, five (5) business days after the publication of this notice, and your ~~opposing days answering affidavit~~ within fifteen (15) business days after filing your notice of intention to oppose.



IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN

CASE NO.: D4472/2023

Before the Honourable Judge _____

On 13 June 2023

In the matter between:

TONGAAT HULETT LIMITED (IN BUSINESS RESCUE)	First Applicant
TONGAAT HULETT SUGAR SOUTH AFRICA (PROPRIETARY) LIMITED (IN BUSINESS RESCUE)	Second Applicant
TREVOR JOHN MURGATROYD N.O.	Third Applicant
PETRUS FRANCOIS VAN DEN STEEN N.O.	Fourth Applicant
GERHARD CONRAD ALBERTYN N.O.	Fifth Applicant
and	
SOUTH AFRICAN SUGAR ASSOCIATION	First Respondent
S.A. SUGAR EXPORT CORPORATION (PROPRIETARY) LIMITED	Second Respondent
MINISTER OF TRADE, INDUSTRY AND COMPETITION	Third Respondent
SOUTH AFRICAN SUGAR MILLERS' ASSOCIATION NPC	Fourth Respondent
SOUTH AFRICAN CANE GROWERS' ASSOCIATION NPC	Fifth Respondent
SOUTH AFRICAN FARMERS' DEVELOPMENT ASSOCIATION NPC	Sixth Respondent
RCL FOODS SUGAR & MILLING (PROPRIETARY) LIMITED	Seventh Respondent
ILLOVO SUGAR (SOUTH AFRICA) (PROPRIETARY) LIMITED	Eighth Respondent



UMFOLOZI SUGAR MILL (PROPRIETARY) LIMITED	Ninth Respondent
GLEDDHOW SUGAR COMPANY (PROPRIETARY) LIMITED	Tenth Respondent
HARRY SIDNEY SPAIN N.O	Eleventh Respondent
UCL COMPANY (PROPRIETARY) LIMITED	Twelfth Respondent
ALL REGISTERED GROWERS	Thirteenth to Twenty-Three Thousandth Respondents
THE AFFECTED PERSONS IN THL'S BUSINESS RESCUE	Twenty-Three Thousand and First Respondents and Further Respondents

DRAFT ORDER

Having heard counsel for the applicants, the following order is made pursuant to Part A of the applicants' application -

- 1 The applicants are granted leave to give notice of the main application (being Part B of the notice of motion) by way of substituted service on the thirteenth and further respondents in the following manner. Within five (5) days of the grant of this order in Part A -
 - 1.1 the fifth and sixth respondents are directed to cause a copy of the complete founding papers to be emailed to each grower registered with them, for whom they have email addresses on file;

- 1.2 the third to fifth applicants are directed to cause a copy of the complete founding papers to be emailed to each affected person in the first applicant's business rescue, for whom they have email addresses on file;
- 1.3 the first applicant and the first respondent are each directed to publish a link to the complete founding papers on their websites; and
- 1.4 the third to fifth applicants are directed to cause notice of the application, in the form of Annexure "X" hereto to be published, in the following newspapers -
- 1.4.1 *Business Day*, in English;
- 1.4.2 *The Natal Mercury* in English and isiZulu; and
- 1.4.3 *The Mpumalanga News*, in English, isiZulu and siSwati.
- 2 If any of the thirteenth and further respondents intend opposing Part B of the application, they are required -
- 2.1 to notify the applicants' attorney in writing, within five (5) days of compliance with the orders A 1.1 to 1.4.3 in Part A above of such intention to oppose and, in such notice, to appoint an address as referred to in Rule 6(5)(b) at which they will accept notice and service of all documents in these proceedings; and



2.2 within fifteen (15) days after you have given notice of your intention to oppose the application, to file your answering affidavits, if any.

3 The costs of this Part A shall be costs in the main application (Part B).

BY ORDER OF THE COURT

REGISTRAR

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