

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

**CASE NO.: 2026-031780**

In the matter between: -

Gerhard Conrad Albertyn N.O.

Trevor John Murgatroyd N.O.

Petrus Francois Van Den Steen N.O.

Applicant

and

Tongaat Hulett Limited

(in business rescue)

The Affected Persons

First Respondent

Further Respondents

and

ABRINA 9422 (PTY) LIMITED

Intervening Party

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**ANSWERING AFFIDAVIT OF ABRINA 9422 (PTY) LTD**

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I, the undersigned,

**ADHARSH KADARNATH MAHARAJ,**

do hereby make oath and state,

1.

The facts and statements deposed to herein, are within my own personal knowledge and belief unless stated otherwise and are both true and correct.

2.

I am an adult male and a director of ABRINA 9422 (PTY) LTD. I have been duly authorized to depose to this affidavit and to oppose this application on behalf of the Abrina 9422 (Pty) Limited ("Abrina").

3.

I have read the Founding Affidavit herein and I proceed to respond thereto insofar as may be necessary as set out hereunder.

**PROCEDURAL IRREGULARITY**

- 4.1 Before addressing the merits of the Application, it is necessary to record a serious procedural irregularity. The matter was heard online on the 27<sup>th</sup> February 2026 with at approximately 200 parties online. This is not common practice in the KwaZulu-Natal High Court, and indeed the facility was entirely unfamiliar to my legal counsel.
- 4.2 No notification of an online hearing was communicated to the intervening party's counsel, nor was any link provided. Annexure ("AM1") is attached hereto, showing email correspondence from the Applicant's attorney requesting my counsel's email address on behalf of the respective judge's secretary, ostensibly to provide an online link. However, no such link was ever furnished. Accordingly, Abrina's counsel was of the view that the matter was proceeding in the Durban High Court in the ordinary course.
- 4.3 It was only on 26 February 2026, after business hours, that counsel for RGS (an intervening party) telephoned my counsel in order to converse and had informed her that the matter was occurring online, which was unbeknownst to my legal counsel, and had graciously provided the necessary link. Counsel for RGS further advised that *ex parte* communications had been made by the Applicants' legal representatives for the matter to be heard online, which

communications were entertained and thereafter arrangements were made for the matter to be heard online. There was no notifications given to all affected parties that the matter was proceeding online.

4.4 This irregularity had not only prejudiced Abrina as an intervening party on record. Many affected parties/persons had physically attended court for the purposes of viewing and potentially intervening in this matter, only to be informed on the day of the hearing that the matter was being heard online. Counsel for the intervening shareholders of THL was one such party who was not informed and had to promptly login to the matter from court. Another affected party, a duly authorised representative of the union FAWU, attended court and was informed that the matter was online. He did not have the facility to login from court, and was only able to view the matter after my attorneys of record directed him to their offices. It is further submitted that countless other affected persons would have been similarly prejudiced.

4.5 The fact that such a crucial decision was made on an *ex parte* basis is unacceptable, particularly given the extreme magnitude and ramifications of this case that this Honourable Court ought to know about. Hundreds of thousands of people are affected by the outcome. For the Applicant to separate affected parties by hiding behind the veil of the online space is telling of their intentions, which will be elaborated on herein, regardless of whether their concerns may or may not be legitimate. Neither Abrina nor any other affected

persons, including THL, were afforded the opportunity to argue against this arrangement, since it was made *ex parte*.

4.6 I was of the view that our court system is adversarial. Yet this action taken by this Honourable Court, at the instance of the Applicant, suggests a more partial inquisitorial approach. The affected party (Abrina) records its objection to this irregularity, which has compromised the fairness and transparency of these proceedings.

4.7 We also record that at the commencement of the hearing on the 27<sup>th</sup> February 2026, that the parties were advised on line by the Registrar that only Counsel was permitted to keep their cameras and microphones on, meaning that any affected party not represented by Counsel, was not permitted an audience, which is wholly untenable.

4.8 There is no reason why this matter, which is in the public domain, must not be heard in a public forum. If there is any perception of fear on the part of the Applicant and its legal team (which is denied) then, arrangements must be made for them attend the hearing virtually and the rest of the legal representatives and affected parties can attend the hearing in person. If the fear is that there will be public violence if the matter proceeds, then it makes no difference whether the Applicant and its legal team attend the hearing as there will allegedly be a public outcry and rioting simply because the application is proceeding. The hearing online unnecessarily complicates the matter from a

procedural aspect considering the number of parties involved. It was clear at the hearing on the 27<sup>th</sup> February 2026 that there was no order in the manner in which the matter proceeded and there was no opportunity given to affected parties which were not legally represented.

5.

I turn now to deal with the allegations contained in the Founding Affidavit. In this regard it is recorded that the Abrina shall not repeat the contents of the allegations contained in its founding affidavit in the application for leave to intervene and in its preliminary answering affidavit on the issue of urgency. Abrina prays that the contents of both these affidavits shall be read as if specifically incorporated herein.

6.

Save as is specifically admitted hereinafter, Abrina denies each and every allegation contained in the Applicant's Founding affidavit as if specifically traversed and accordingly puts the Applicant to the proof thereof.

#### **THE ABSENCE OF CONFIRMATORY AFFIDAVITS BY ALL BRPS**

7.

7.1 The Applicant purports to put up confirmatory affidavits of the two other BRPs.

- 7.2 A simple perusal of the purported confirmatory affidavits which are attached to the founding affidavit, will evidence that these documents are neither signed nor commissioned.
- 7.3 Considering that the Applicant purported at its leisure to start drawing up this application in November last year, it is incredulous that there are no proper confirmatory affidavits by all the BRPs.
- 7.4 Accordingly those allegations which record the interaction or involvement of all the BRPs (bearing in mind that the Applicant does not identify in its founding affidavit the roles played by each BRP in order to enable the affected parties to identify the BRP who would have attended to or communicated any matters referred to in the founding affidavit) are uncorroborated by any confirmatory affidavit.

**WHOLLY UNSATISFACTORY MANNER IN WHICH THE FOUNDING AFFIDAVIT IS DRAFTED**

8.

- 8.1 Despite the fact that the Applicant has had on its own version three months within which to draft its founding affidavit, the Applicant has elected to draw up its founding affidavit in a manner in which the identity of the relevant business rescue practitioner and the role they played in dealing with the matter, whether in attending meetings or when communicating with any of the relevant parties, is not revealed. It is therefore difficult to ascertain whether the deponent to the founding affidavit had the requisite personal knowledge to depose to the founding affidavit relating to such interaction and/ or communication.

8.2 Apart from this the deponent to the founding affidavit makes allegations in relation to interactions and communications between third parties, in respect of which neither the deponent nor the applicant would have personal knowledge. These allegations are tantamount to hearsay evidence and in this regard the Applicant was required to put up the confirmatory affidavits by the various role players, which include but are not limited to named representatives of Vision, IDC and DTIC. Since the Applicant appears to have drafted this "urgent" application at a leisurely and considered pace, there is no reason why the Applicant would not have been able to obtain confirmatory affidavits from the relevant role players.

**FAILURE TO EXHAUST ALL REMEDIES AVAILABLE TO THEM UNDER THE ACT AND INADEQUACY OF ALLEGATIONS OF COMMERCIAL INSOLVENCY**

9.

9.1 Firstly, in the Applicant's own status reports of October, November, and December 2025, the Applicant expressly stated that THL had reasonable prospects of being rescued. It is inconsistent and unexplained that this position has now suddenly changed to "no prospects."

9.2 Secondly, the Applicant has failed to exhaust all remedies available to them under the Act. Section 153 provides for the extension of business rescue proceedings and the proposal of a revised plan where the existing plan has

failed. The Applicant could have sought such an extension in order to implement a new plan and/or seek a new prospective buyer and/or seek additional PCF, particularly given that the "Vision Plan" has failed for reasons that will be elaborated upon herein.

9.3 Thirdly, the statutory moratorium remains active. This means that no creditor can demand payment unless they apply to this Honourable Court and seek liquidation themselves. No such application has been brought by any creditor. The existence of the moratorium preserves the company's position and provides the necessary breathing space to restructure.

9.4 Accordingly, the Applicants' assertion that THL has no reasonable prospects of rescue is unfounded. The statutory framework continues to provide mechanisms for restructuring, and the Applicants' own reports confirm that prospects existed as recently as December 2025, however it is noted that these reports contradict the correspondence between the Applicant and IDC which will be discussed hereinbelow and expose the *mala fides* of the Applicant. The sudden reversal of position is not supported by law or fact, and appears calculated to justify liquidation rather than to pursue the remedies available

9.5 The Applicant has, at all material times, been provided with PCF from the IDC. The "Vision Plan", allegedly voted in, had expressly stated that IDC is under no obligation to extend their PCF. Due to this fact alone, the Applicant ought to have made provisions for the possibility of the PCF provided by IDC being short,

instead they had attempted to strong arm IDC by threatening liquidation in the event that IDC does not further extend the PCF instead of seeking other avenues as the Applicant ought to have done.

9.6 The Applicant relies heavily on alleged adverse market conditions to justify their assertion that Tongaat no longer has reasonable prospects of rescue. This reasoning is flawed.

9.7 The adverse market conditions described by the Applicant have not manifested overnight. They are circumstances under which THL has operated for a considerable period of time. If indeed these conditions were critical breaking points for the continued operation of THL, it begs the question why the Applicant had consistently expressed optimism in their monthly reports regarding the reasonable prospects of a successful business rescue.

9.8 This contradiction undermines the credibility of the Applicant's assertion. It is submitted that the Applicant's sudden reversal is not based on new or unforeseen market realities.

9.9 The Applicant has failed to provide this Honourable Court with THL's financial documents showing the need for urgent short-term interim funding.

9.10 The "South Africa Sale of Business Agreement" that the Applicant refers to has not been attached to the Applicant's founding papers. In fact, many documents that the Applicant refers to has not been attached to their founding papers and will be elaborated on and revealed herein below. The Applicant fails to take this Honourable Court into their confidence by providing a full and transparent Application. Instead, the Applicant has filed a voluminous Founding Affidavit (1356 pages), of which approximately 900 pages consists of shareholder names, yet it has failed to provide pertinent documents which they themselves refer to in their Founding Affidavit.

9.11 It is reiterated that this Honourable Court, nor any cited or affected parties can make any submission or determination without the relevant financial documents that the Applicant has failed to provide. The Applicant failing to provide these documents is a clear attempt by the Applicant to hastily liquidate the THL under cloak and dagger for reasons that can only be speculated on at this point in time.

9.12 The Applicant has failed to demonstrate that THL is commercially insolvent. Their affidavit does not set out any substantive evidence to support such a conclusion.

9.13 In particular:

- (i) The Applicant has not identified which expenses THL is unable to meet.
  
- (ii) They have not disclosed how much working capital remains available to THL.
  
- (iii) Apart from Vision, they have not specified which creditors are demanding payment, nor have they shown that any creditor has approached this Honourable Court to seek liquidation.
  
- (iv) No detailed financial analysis is provided to substantiate the claim of insolvency.
  
- (v) The absence of this information is material. Commercial insolvency requires proof that the company is unable to pay its debts as they fall due in the ordinary course of business. The Applicant has not furnished any such proof.
  
- (vi) On the contrary, the statutory moratorium remains in place, which prevents creditors from enforcing claims against THL except by application to this Honourable Court. No such application has been brought. THL therefore continues to operate under the protection of the

moratorium, and the Applicant's assertion of insolvency is unsubstantiated.

**FAILURE TO PROVIDE DOCUMENTS SOUGHT IN THE RULE 35(12), (13) AND (14) NOTICE**

10.

10.1 On the 26<sup>th</sup> February 2026, Abrina's attorney delivered a notice in terms of Uniform Rule 35(12), (13) and (14) on the Applicant's attorney. A copy of such notice is already attached to Abrina's preliminary answering affidavit marked "**AA1**".

10.2 In order to investigate and to prepare this answering affidavit, it was necessary for Abrina to have access to the documents requested in the rule 35 notice. This issue was also raised at the hearing on the 27<sup>th</sup> February 2026. In adjourning the matter and in placing the parties on terms for the delivery of further affidavits, the court commented that it was expected that the parties would co-operate with one another and be mindful of their obligations under the rules. This could only mean that the court was intimating that the parties are required to cooperate with each other to enable timely compliance with the abbreviated periods set out in the court order of the 27<sup>th</sup> February 2026.

- 10.3 In this regard a letter was sent to the Applicant's attorney on the afternoon of the 27<sup>th</sup> of February 2026, calling upon them to make available the requested documents or to provide a response to the Rule 35 notice by Monday, the 2<sup>nd</sup> March 2026. A copy of this letter is this letter is annexed hereto marked **"AM2"**;
- 10.4 The Applicant's attorney forwarded an e-mail to all the parties on the evening of the 27<sup>th</sup> February 2026, when they sought to cheekily remind all the parties of their obligations to comply with the time period stipulated in the court order. A copy of this letter is annexed hereto marked **"AM3"**.
- 10.5 Abrina's Attorney on the 1<sup>st</sup> March 2026, wrote back to the Applicant's attorney advising them that our Rule 35 notice had been delivered prior to the court hearing and reminded them that the Honourable Judge Hlatshwayo had during the course of the hearing on the 27<sup>th</sup> February 2026 stated that all parties know and understand their duties and obligations (this would include any obligations under the rules) and intimated that he wanted the parties to bear this in mind, in ensuring that the deadlines are met. This, with respect, meant that the parties were required not to be obstructive and to co-operate with each other, to enable the respective parties to be able to comply with the deadlines set out in the court order. The Applicant was called upon again to comply with the Rule 35 notice. A copy of this letter by Abrina's attorney is annexed hereto marked **"AM4"**.

10.6 The Applicant's attorney delivered a response to the rule 35 notice on the 3<sup>rd</sup> March 2026, a copy of which is annexed hereto marked "**AM5**".

10.7 It is clear from a reading of the Applicant's response that the Applicant had no intention of complying with the 35 notice. The Applicant has relied on technical defenses which would include but not be limited to claiming that Abrina was required to first obtain an order from this court directing that the rules relating to discovery are applicable to these particular proceedings and the Applicant has satisfied themselves in largely alleging that the requested items are not referred to in the relevant paragraphs of the founding affidavits (which is factually not the case), alternatively irrelevant to the matters in issue in the application and not reasonably required by Abrina to prepare its the founding affidavit. They have also alleged that the items and the requests are overly broad. I respectfully disagree with the assertions of the Applicant in this regard. The requested documentation were referred to in the founding affidavit and the annexures thereto and are relevant and germane to the determination of whether the business rescue plan was validly adopted; whether the business rescue should be discontinued and whether THL should be liquidated. The BRPs have a duty to make a full and frank disclosure to the affected parties.

10.7.1 I pause to record that RGS's counsel at the hearing had already advised the court and all the parties that the Applicant will not comply with the Rule 35 notice and that following the mechanism of Rule 35 was "an exercise in futility" as this

was a route which had been adopted by RGS previously and which had not yielded any results.

10.8 It is incredulous that the BRP demonstrates a clear lack of transparency. It is evident that the BRP have no intention of making a full and frank disclosure to all the affected stakeholders and parties. Instead of making available those documents which are readily available to the BRPs, the BRP's resort to cloak and dagger mechanisms, demonstrating their reluctance to make a full and frank disclosure to the above Honourable Court and the affected parties.

10.9 It is apparent that the BRPs require that the court hear an opposed motion on whether they should provide information, which at the very least ought to have formed the gravamen of their Liquidation application. The conduct of the BRPS and their legal representatives, in this regard is reprehensible and calculated to conceal facts from the Growers and the other affected parties.

10.10 I respectfully submit that the Senior and seasoned BRPs have conducted themselves in breach of the minimum standards required of BRPs and certainly this Honourable court must take a dim view of their conduct. It matters not whether the BRPs administrate entities worth R1m or R12Bn, the BRPs are required to maintain a certain minimum standard.

- 10.11 I am advised that the conduct of BRPs is governed primarily by the Companies Act 71 of 2008 ("the Act"), and further guided by recognised professional standards such as the SARIPA Code of Ethics, which reflects the accepted norms of ethical and competent practice in the business-rescue profession. A copy of the SARIPA Code of Ethics and Professional Conduct is annexed hereto marked "AM6".
- 10.12 Even if the BRPs in this matter are not members of SARIPA, the SARIPA Code of Ethics remains a widely recognised benchmark for proper professional conduct and is routinely relied upon by courts, creditors, and practitioners to assess whether BRPs have acted with the required integrity, independence, and diligence.
- 10.13 Section 140(1)(a) of the Act provides that a BRP must exercise the powers and perform the functions of a director, subject to the duties imposed on directors by the Act. These duties include acting in good faith, for a proper purpose, in the best interests of the company, and with the degree of care, skill, and diligence reasonably expected of a person carrying out such functions.
- 10.14 Section 140(1)(b) requires a BRP to manage the company honestly, impartially, and in a manner that does not unfairly prejudice any affected person or stakeholder.
- 10.15 Section 141(1) obliges a BRP to investigate the company's affairs,

business, property, and financial situation fully, objectively, and without predetermined outcomes.

- 10.16 Section 141(2)(a) provides that a BRP may only conclude that there is no reasonable prospect of rescuing the company after conducting a proper investigation and only where such a conclusion is objectively justified on the facts.
- 10.17 Section 141(2)(b) further requires that, if a BRP forms such a view, they must notify all affected persons and provide full, transparent reasons for that conclusion.
- 10.18 The SARIPA Code of Ethics emphasises that BRPs must act with integrity, honesty, and independence; avoid conflicts of interest; exercise professional competence and due care; communicate transparently; and treat all affected persons fairly and without bias.
- 10.19 The SARIPA Code further requires BRPs to pursue business rescue where it is reasonably possible and prohibits conduct that prematurely or improperly steers a company toward liquidation without proper investigation, consultation, or justification.

- 10.20 Conduct by BRPs that is biased, predetermined, reckless, or aimed at liquidation without exhausting reasonable rescue alternatives constitutes a breach of both the statutory duties imposed by the Act and the ethical standards reflected in the SARIPA Code.
- 10.21 Where BRPs fail to consult affected persons, withhold material information, favour particular creditors, or disregard viable rescue proposals, such conduct is inconsistent with the duties of independence, objectivity, transparency, and diligence required of them.
- 10.22 In the context of Tongaat Hulett, any attempt by the BRPs to pursue liquidation without proper investigation, without meaningful consultation, or without objectively considering viable rescue alternatives would amount to misconduct warranting judicial scrutiny and intervention, especially in circumstances where the 37 previous monthly status reports (which Abrina was able to obtain from the website) evidence clearly that the BRPs contended that the business was capable of rescue. There was no intimation in these reports of any of the delays referred to in the Founding Affidavit. Copies of these reports are annexed hereto marked "**AM7**".

11.

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11.1 It is further submitted that S140(3)(a) of Act 71 of 2008 states:

*“During a company’s business rescue proceedings, the practitioner—*

*(a) is an officer of the court, and must report to the court in accordance with any applicable rules of, or orders made by, the court;”*

11.2 In annexure (“**AM3**”), being a letter dated 27 February 2026, at paragraph 4 the Applicants demonstrate a clear abuse of the urgency of this matter. They have attempted to withhold information that was properly requested in terms of Rule 35. That information is pertinent to all affected parties and is required by this Honourable Court in order to make determinations in these proceedings.

11.3 The Applicants’ conduct is inconsistent with their statutory duty as officers of the court. Instead of ensuring transparency and compliance with the rules, they have sought to use urgency as a shield to avoid disclosure. This undermines both the adversarial nature of the proceedings and the ability of affected parties to properly test the Applicants’ case.

11.4 It is submitted that the Applicants’ failure to provide the requested information, coupled with their reliance on urgency, is a procedural abuse. This Honourable Court cannot be asked to determine matters of such magnitude without the benefit of full disclosure, particularly where the Applicants themselves are under a statutory duty to report openly and candidly.

11.5 I record that an abuse of the business rescue process and the failure to perform objectively may justify the removal of a business rescue practitioner. However at this stage and in the absence of having all of the relevant material before it, the Applicant cannot at this stage make an application for the removal of the business rescue practitioners.

11.6 I seek merely to highlight the manner in which the BRPs have conducted themselves and how they have deliberately flouted their obligation to be transparent with all the affected parties, who are entitled to all of the requested information for the purposes of being able to effectively deal with this liquidation application. The fact that the Applicant continues to gatekeep this information at this late stage (i.e. in these liquidation proceedings), leaves the one with the inescapable conclusion, that the BRPs seek to conceal certain material facts and or documents from the affected parties in an attempt to hinder or to obstruct affected parties from being able to properly and fully ventilate their defenses to the liquidation application.

## **GENERAL OBSERVATIONS**

12.

12.1 From our perspective, the negotiations referred to by the Applicant cannot be regarded as pertinent to the liquidation of THL. Instead, they reflect the Applicants' attempt to persuade the court that the delay, from the adoption of

the plan in January 2024 until the present application, was justified by their efforts to negotiate. Furthermore, the Applicants seek to rely on these negotiations to demonstrate that they acted diligently and, ultimately, to justify their fees. This position is not common cause, but rather our considered view of the Applicants' conducts.

12.2 What is particularly concerning is that the documents required have not been attached to the Applicants' application papers. Although lawful requests have been made for these documents, it is our considered view that they will not be produced for inspection. These documents are critical to assessing the veracity of the allegations contained in the Applicants' liquidation papers. In their absence, we are left with no option but to rely on media publications, the versions presented by other Respondents and other intervening parties, and, at worst, to speculate on what may have transpired.

12.3 The Applicant makes various allegations and fails to put up any supporting documentation in relation to *inter alia*, the following:

- (i) the revised and restated South African Sale of Business Agreement referenced therein, together with all schedules, annexures, mark-ups, and any written confirmation of its purported agreed form, has not been attached.

- (ii) the Minutes of the Tongaat team meetings referred to, together with any written presentation materials, forecasts, or internal memoranda allegedly relied upon, have not been provided.
- (iii) discussions held as no documentary proof of the alleged discussions has been provided. In particular, written records of the discussions, including correspondence, emails, memoranda, or notes exchanged between the BRPs, Vision, and the IDC, have not been produced.
- (iv) no written proposal, correspondence, or record evidencing the alleged security-sharing proposal and Vision's response thereto has been produced.
- (v) the agenda, minutes, or written notes of the weekly update meeting referred to, together with any cash-flow forecasts allegedly relied upon, have not been produced.
- (vi) no cash-flow forecasts, facility statements, internal liquidity reports, or written correspondence referred to have been provided.
- (vii) no written record of any alleged telephone calls, nor any subsequent confirmatory correspondence, has been provided.

- (viii) the minutes or notes of the meetings referred to, together with any written summary provided to stakeholders, have not been furnished.
- (ix) the letters referred to, together with all annexures in full, have not been produced.
- (x) the minutes or notes of the meeting alleged, together with any written representations made, have not been produced.
- (xi) no written funding proposal, term sheet, correspondence, or commitment relied upon has been produced.

12.4 The aforesaid documents are necessary and an adverse inference needs to be drawn that the Applicant is deliberately concealing these documents as it may call into question the conduct of the BRPs.

### **ANOMALIES WITHIN THE APPLICANT'S OWN CASE**

13.

13.1 The Applicant's own statutory monthly reports, annexures FA6 (October 2025), FA7 (November 2025) and FA8 (December 2025), expressly state:

*"It remains our view that the Company stands a reasonable prospect of being rescued, as contemplated in section 128(1)(h) of the Companies Act, in a manner that will balance the rights and interests of All Affected Persons."*

13.2 Further, in correspondence dated 9 December 2025 (annexure "FA28"), the Applicant themselves recorded:

*"We acknowledge and appreciate the fact that all parties have worked with intensive urgency and heightened discipline to address these matters. The constructive engagements that have taken place have enabled us to reach a stage where the BRPs are now satisfied that a reasonable prospect of rescue remains intact."*

13.3 These documents directly contradict the Applicant's assertion in paragraph 15 that Tongaat no longer has a reasonable prospect of rescue.

13.4 The allegation that "there is no longer a possibility of continuing to implement the Plan" is denied.

13.4.1 The Applicant's own monthly reports (FA6–FA8) confirm:

- (i) "The transaction is in the final stages of implementation" (FA6).
- (ii) "The parties... are continuing to work towards implementation" (FA7).
- (iii) "Implementation... is an ongoing process" (FA8).

13.5 The allegation that THL “does not have access to requisite further funding” and lacks certainty regarding refinancing of the PCF, is denied.

13.5.1 The following documents contradict this allegation:

- (i) FA29 (IDC letter, 9 December 2025): IDC confirms active workstreams, timelines, and commitment to a long-term solution.
- (ii) FA30 (IDC email, 17 December 2025): IDC confirms conditional approval for a R200 million PCF increase.
- (iii) FA28 (BRPs’ letter, 9 December 2025): BRPs confirm “reasonable prospect of rescue remains intact.”

The Applicant’s allegations in this regard, are therefore false and misleading.

13.6 The allegations regarding “adverse market conditions”, “increased imports”, “decline in global sugar prices”, and “loss of margins” are not admitted.

13.6.1 The Applicant provides no annexures, no data, no industry reports, and no empirical evidence to support these claims.

13.6.2 Annexure L (Sugar Industry Considerations), relied upon by the Applicant, does not support the allegations in paragraph 15.3. It is a general industry commentary, not evidence of Tongaat’s financial position.

13.7 The allegations concerning SASA manufacturing allowances and “slow industry reform” are not admitted.

13.7.1 No correspondence from SASA, no tariff documentation, and no financial modelling are annexed to support these claims.

13.8 The allegation that “urgent interim funding will not be met” and that the South African Sale of Business Agreement “will not take place” is denied.

13.8.1 The Applicant’s own documents contradict this:

- (i) FA6–FA8 confirm ongoing implementation.
- (ii) FA29 confirms IDC commitment to timelines.
- (iii) FA28 confirms BRPs’ satisfaction that rescue remains viable.

13.9 The allegations regarding “challenging trading conditions” and “insufficient headroom” are not admitted.

13.9.1 No financial schedules, liquidity forecasts, or PCF utilisation reports are annexed.

13.10 The allegation that the PCF facility “has been substantially utilised” and “is expected to be depleted” is not admitted.

13.10.1 The Applicants provide no PCF drawdown schedules, no IDC statements, and no financial evidence.

12.10.2 On the contrary:

- (i) FA29 and FA30 show IDC was actively considering PCF increases and restructuring.

13.11 The allegation that THL “is commercially insolvent” is denied.

13.11.1 This is a legal conclusion, not a fact, and requires objective financial evidence, which the Applicant has not provided.

13.11.2 Further:

- (i) Annexure J (litigation register) shows Tongaat has substantial recoverable assets, including claims of R450m, R105m, R52m, and R757m.

13.12 The allegation that the application is brought “in accordance with section 141(2)” is not admitted.

13.12.1 While the Applicant purports to act under section 141(2), they have not met the statutory threshold, as their own annexures contradict their conclusion that rescue is no longer reasonably possible.

13.13 The allegations of urgency are denied.

13.13.1 The alleged urgency is self-created by the Applicant's own conduct, including:

- (i) Failure to comply with IDC governance timelines (FA27, FA29, FA30).
- (ii) Failure to seek alternative funding (IDC letter 3 December 2025).
- (iii) Failure to progress the Plan timeously.

13.14 The allegation that THL's funding requirements "will not be met" is denied.

13.14.1 IDC correspondence (FA29, FA30) shows:

- (i) Conditional approval for PCF increases.
- (ii) Active engagement with Vision.
- (iii) Ongoing restructuring workstreams.

13.15 The allegation that THL "is unlikely to comply with its payment obligations" is not admitted.

13.15.1 No financial schedules or cashflow forecasts are annexed.

13.16 The allegation that a provisional liquidator is urgently required is denied.

12.16.1 The Applicant's own annexures show:

- (i) Rescue remained viable (FA6–FA8, FA28).
- (ii) IDC and Vision were actively engaged (FA29, FA30).
- (iii) Implementation was progressing.

13.17 The allegation that the BRPs complied with their obligations is denied.

13.17.1 The Applicant's own annexures (FA6–FA8, FA27–FA30) show:

- (i) Delays in implementation;
- (ii) Failure to meet IDC timelines;
- (iii) Failure to seek alternative funding; and
- (iv) Contradictory statements regarding rescue prospects

13.18 The allegation that the Plan “encompassed two alternative transactions” is noted.

12.18.1 However:

- (i) The Applicant's characterisation of the Plan is selective,
- (ii) The Applicant omits material provisions relating to implementation timelines, funding mechanisms, and the role of Vision,

- (iii) The Applicant omits the fact that the Plan expressly contemplated ongoing engagement with IDC and Vision, which was indeed occurring (see FA29, FA30).

13.19 The allegation that the BRPs “have been implementing the asset sale transaction” is not admitted.

12.19.1 The Applicant’s own annexures (FA6–FA8) show:

- (i) Implementation was ongoing,
- (ii) Implementation was progressing,
- (iii) Implementation was not complete,
- (iv) Delays were caused by BRP inaction, IDC governance timelines, and Vision–IDC negotiations, not by any failure of the Plan.

13.20 The Applicant states that Vision acquired the Lender Group’s claims and security, Yet the Applicant simultaneously claim they “are not in possession” of the acquisition agreement. The Applicant therefore cannot attest to the terms, conditions, or implications of the agreement.

13.20.1 The Applicant is put to the strict proof of:

- (i) The existence of the agreement,
- (ii) Its terms,

- (iii) Its effect on the Plan,
- (iv) The timing of the transfer of claims and security.

13.21 The allegation that the Lender Group voted in favour of the Plan “with full knowledge” of the acquisition agreement is not admitted.

13.22.1 The Applicant:

- (i) does not attach any minutes of the creditors’ meeting,
- (ii) does not attach any correspondence from the Lender Group confirming such knowledge,
- (iii) does not attach the acquisition agreement itself.

13.22 The allegation that “Vision is made up of a number of parties” is noted.

13.22.1 The Applicant’s list of Vision parties is not admitted, as the Applicant does not attach:

- (i) The Vision consortium agreement,
- (ii) Any confirmatory documentation from Vision,
- (iii) Any proof of the composition of the consortium.

13.23 The Applicant selectively quotes the Plan and omit material provisions, including:

- (i) The Plan's reliance on IDC–Vision negotiations,
- (ii) The Plan's reliance on ongoing engagement,
- (iii) The Plan's reliance on timely approvals,
- (iv) The Plan's reliance on BRP facilitation,
- (v) The Plan's reliance on funding structures that were still being finalised.

13.24 The allegation that the Plan required “confirmation of the refinancing of the IDC PCF” is noted, but the Applicant omits that:

- (i) IDC and Vision were actively negotiating refinancing (FA29, FA30),
- (ii) IDC had already conditionally approved further PCF increases (FA30),
- (iii) The BRPs themselves confirmed that rescue remained viable (FA28).

13.25 The allegation regarding SASA indebtedness is not admitted. The Applicant does not attach:

- (i) The SASA escrow agreement,
- (ii) Any correspondence from SASA,
- (iii) Any financial modelling.

13.26 The allegation regarding R75 million for concurrent creditors is not admitted. The Applicant does not attach:

- (i) Any financial schedules,
- (ii) Any Plan extracts,
- (iii) Any supporting documentation.

13.27 The allegation that the Plan “does not prescribe any condition relating to Vision raising funding” is not admitted.

13.27.1 The Applicant omits:

- (i) The Plan’s reliance on Vision’s ability to assume the PCF,
- (ii) The Plan’s reliance on Vision’s ability to fund operations post-closing,
- (iii) The Plan’s reliance on Vision’s ability to satisfy IDC requirements.

13.27.2 IDC correspondence (FA29, FA30) shows:

- (i) Vision’s debt-carrying capacity was under review,
- (ii) Vision had requested write-offs,
- (iii) IDC required Vision to contribute funding.

13.27.3 The Applicant's statement is therefore misleading.

13.28 The allegation that Vision discharged the balance of the payment consideration on 9 May 2025 is not admitted.

12.28.1 The Applicant does not attach:

- (i) Proof of payment,
- (ii) Bank statements,
- (iii) Correspondence from the Lender Group,
- (iv) Any confirmation from Vision.

13.29 The allegation that four Sale of Business Agreements were concluded is not admitted.

12.29.1 The Applicant does not attach:

- (i) The South African Sale of Business Agreement,
- (ii) The Botswana Sale of Business Agreement,
- (iii) The Mozambique Sale of Business Agreement,
- (iv) The Zimbabwe Sale of Business Agreement.

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13.30 The allegation that the SASA escrow agreement was signed on 2 June 2025 is not admitted.

13.30.1 The Applicant does not attach:

- (i) The escrow agreement,
- (ii) Any correspondence from SASA,
- (iii) Any proof of execution.

13.31 The allegations that the BRPs “have taken all steps available to them” are specifically denied.

13.31.1 The Applicant’s own annexures (FA6–FA8, FA27–FA30) show:

- (i) Delays in implementation,
- (ii) Failure to meet IDC timelines,
- (iii) Failure to seek alternative funding,
- (iv) Failure to progress the Plan timeously,
- (v) Contradictory statements regarding rescue prospects.
- (vi) No valuation reports are annexed.
- (vii) No JSE correspondence is annexed.
- (viii) No SARB correspondence is annexed.

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- (ix) No approvals or B-BBEE Commission filings are annexed.
- (x) No permits or licence transfer documentation is annexed.

13.31.2 IDC correspondence (FA29, FA30) shows:

- (i) Negotiations were ongoing,
- (ii) BRPs were warned about timelines,
- (iii) BRPs failed to seek alternative funding.

13.32 The allegation that IDC granted “in-principle approval” in April 2025 is not admitted.

13.32.1 The Applicant does not attach:

- (i) The approval letter,
- (ii) The funding structure,
- (iii) The conditions precedent.

13.32.2 IDC correspondence (FA29, FA30) contradicts the Applicant's characterisation of IDC's position.

13.33 The allegation that the South African Sale of Business Agreement was anticipated to close on 1 June 2025 is not admitted.

13.33.1 The Applicant omits:

- (i) That closing was dependent on IDC approvals,
- (ii) That Vision-IDC negotiations were ongoing,
- (iii) That BRPs were warned about timelines (FA27, FA29, FA30),
- (iv) That BRPs failed to seek alternative funding.

#### **DELAYS IN OPENING MILLS**

14.

I can confirm that Maidstone Mill Group Board has confirmed that due to the current circumstances of the liquidation that the start-up date of the Mill, will be fluid and that there is potential of a minimum of one month delay for start-up. The Maidstone Mill was due to start up on the 22<sup>nd</sup> April 2026 and will at the very earliest start up on the 22<sup>nd</sup> May 2026. A copy of a communication from Maidstone Mill Group Board in this regard, is annexed hereto marked "**AM8**". I am unaware of the position of the remaining two mills.

#### **WHETHER THL CAN BE RESCUED**

15.

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The BRPs have been the business rescue practitioners (“BRPs”) of THL for more than three years. Despite having received Post Commencement Funding (“PCF”) in excess of 2.5 Billion Rand they to date, do not have sufficient funds to continue the business of THL. The question arises as to how they utilized these monies.

14.

The Applicant alleges that Vision Sugar Group (“Vision”), who purportedly acquired the Lender Group claims, is the main creditor who holds the majority of voting rights in any decision to be made during Business Rescue hence, when Vision refused an extension in terms of section 153 and/or rather imposed unreasonable conditions to provide an extension, the Applicant then decided to move this Application for the winding-up of THL. The appropriate recourse here, would have been to approach the court to set aside the vote by Vision as being inappropriate.

16.

If the Applicant wanted to rescue THL they could have easily approached this Court for an extension to continue the Business Rescue process rather than to wind up THL.

17.

The Applicant did not take this Honourable Court into their confidence to categorically and clearly inform his Honourable Court that they had conducted the business of THL for 3 years and despite the payment moratorium in terms of the Act, that THL could still allegedly not be rescued. The Applicant has, over the period of the Business Rescue proceedings, provided the affected parties and CIPC with a report on a monthly basis that THL was capable of being rescued. The affected parties only got wind that the Applicant was contemplating winding up THL in February 2026. This omission in the Application papers suggest that the Applicant's motive in winding-up the Respondent, is sinister and as mentioned earlier is nothing more than a thinly veil attempt to force the hand of IDC to come to Vision's rescue in providing the PCF as demanded by Vision.

18.

The Applicant provided little or no information as to the profitability or otherwise of THL. The historic debt of the THL with the Lender Group is no secret and hence the Applicant ought to have informed this Honourable Court whether or not, in the three year period that they were administrating THL, whether any profits or otherwise were made.

19.

The Applicant confirmed having received a demand from Vision in respect of the R11,7 billion Lender Group debt which triggered the winding-up proceedings. Standard Bank

had provided a letter, which letter was a confirmation of funds, stating that Vision had sufficient funds to not just purchase THL, but also to pay the Lender Group. Quite evidently, Standard Bank had misrepresented to the Applicants that Vision was a financially capable to purchase THL.

20.

The proper course was for the BRPs to have considered legal action against Standard Bank arising from the letter in which Standard Bank confirmed that Vision was financially capable of performing its undertakings under the amended Business Rescue plan. It is abundantly clear that the Applicants would have relied on this representation in proceeding with Vision as the controlling creditor. When Vision subsequently failed to perform, the Applicants did not seek to hold Standard Bank accountable for its misrepresentation. The failure to institute proceedings against Standard Bank, or even to take this Honourable Court into their confidence and place this issue before this Honourable Court, raises serious questions as to the *bona fides* of the Applicants and further demonstrates that the winding-up application is contrived because the Applicants have other alternatives.

21.

A further concern is whether Vision has the requisite *locus standi* to cast a vote let alone call up the Lender Group debt as a creditor, which demand was purportedly the catalyst to these liquidation proceedings.

22.

The deal concluded between the Applicant and Vision and between Vision and the Lender Group is one that needs to be probed and investigated and both Vision and Standard Bank ought to be called upon to explain the deals and their role in the corporate hijacking of THL.

23.

The Business Rescue plan was approved in January 2024 where Vision had voted in favour of the plan on the basis that they had purchased the Lender Group claims and hence stood in the shoes of the major banks at that time where Vision, due to the might of its voting rights had dictated the Business Rescue process. It had come to light much later that the Vision Group had only received transfer of the bank's claim and its securities in May 2025. It is respectfully submitted that at the time of the voting and plan in January 2024, Vision did not legally stand in the shoes of the Lender Group, hence it is for this Honourable Court to determine if a valid plan was adopted in January 2024.

24.



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The Applicant's winding-up application is contrived as the Applicants failed to pursue alternate remedies available to them, including, but not limited to:-

- (i) an extension in terms of Section 153 of the New Companies Act;
- (ii) proceedings against Standard Bank arising from its misrepresentation of Vision's financial capacity;
- (iii) proceedings to set aside the vote of Vision as inappropriate, which may also include proceedings to declare the validity of the amended business rescue plan in light of fact that as at the time that Vision proposed and voted in favour of the plan, Vision did not have the requisite *locus standi* to do so.
- (iv) gearing and utilizing the other valuable assets, Voermol Foods and Tongaat Hulett Development, of THL in an attempt to reduce and/or eradicate the debt of THL.

25.

There are several matters which still will require interrogation by the above Honourable Court and will require involvement of various stakeholders, which still include *inter alia*, the following:

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- (i) Did Vision misrepresent its true position at the critical 2024 creditor's vote and if so, does that nullify the result or render it inappropriate?
- (ii) Did the Applicants (as BRPs) wittingly or unwittingly aid this improper process? In this regard RGS has claimed that the Applicants acted in breach of their statutory obligations in that they:
  - (a) intentionally withheld the true status of the implementation of the amended business rescue plan from affected parties; and
  - (b) failed to implement the Plan according to its terms by conceding to Vision's unilaterally imposed conditions and requirements which were, on the Applicant's own version extraneous to the plan."
- (iii) Is Vision's claimed security for the R 11.73 billion debt actually valid and enforceable?

26.

26.1 I have been advised that the BRPs find themselves in a situation which is analogous to *Ex Parte Three Sisters (Pty) Ltd 1986 (1) SA 592 (D)*, where Kriek J held that:

*“In an application by a company seeking an order that it be wound up, and relying upon s 344 (a), the Court must therefore be given sufficient information to enable it to properly exercise its discretion, and probably the first consideration which comes to mind as being relevant is the company's financial position. There may be a number of reasons, quite unrelated to its financial position, why a company would want to be wound up, but it is, even in those cases, relevant whether or not the company has creditors, and once it appears it does have creditors, then the extent of its indebtedness to them and the value of its assets also become relevant.”*

26.2 The BRPs have stepped into the shoes of the directors of THL and they have been operating the business of THL for a period excess of three years. They should be acutely aware of the financial standing of THL. Indeed they are in the best possible position to make a full and frank disclosure to the above Honourable Court about the financial position of THL. Courts take a dim view of directors (who are in a similar position as the BRPS) who do not make a full and frank disclosure of all the material facts, which fall within their knowledge or control, and which may affect the financial position of the business. In this regard, by parity of reasoning the BRPs likewise have a similar responsibility to make a full and frank disclosure to the above Honourable Court about the financial position THL (which include management accounts and any annual financial statements of THL with the BRPs still having the responsibility to file annual financial statements on behalf of THL whilst it is in business rescue). I verily believe that in its various approaches for PCF, that the BRPs would have been required to have provided copies of the management accounts of THL

and its annual financial statements. There is no conceivable way that IDC would have considered providing any PCF to THL in the absence of updated and audited books of account and without being provided with proof of what the contemplated income and expenditure of THL would be.

### **THE COUNTER-APPLICATION BROUGHT BY RGS**

27.

27.1 Due to the failure on the part of the Applicant to make available the documents requested in the Rule 35 notice, Abrina is not in a position at present to institute any counterclaim against the BRPs as was contemplated in its founding affidavit in the application for leave to intervene. I am aware that there are proceedings presently pending before the Supreme Court of Appeal in relation to an order to disclose which was granted against Vision. RGS has applied in its counter-application for leave to execute upon the disclosure order whilst the application for leave to appeal is pending. Abrina wholly supports RGS in its counter-application which is aimed at compelling disclosure and is also aimed at setting aside the business rescue plan.

27.2 Once Vision is compelled to make a full disclosure of the documents relating to the Vision transactions in the business rescue, Abrina will be in a position to draw the counter-application in the nature contemplated in its Founding Affidavit in the application for leave to intervene. To the extent necessary Abrina reserves it right to do so, in due course.

27.3 Abrina is in full agreement with RGS that the business rescue should be set aside and also contends that the vote of Vision should be deemed inappropriate.

27.4 Abrina will not at this stage be filing its own counter-application due to the shortness of time and its inability to access all the relevant documentation relating to the Vision transaction.

#### **IDC LETTER DATED 4<sup>th</sup> DECEMBER 2025**

28.

28.1 In its letter dated 4<sup>th</sup> December 2025 the IDC in response to the Applicants' request for consideration and approval of an additional advance of R600 million to address certain alleged liquidity constraints being experienced by THL pending the implementation of the Plan, stated:

*" 9. The IDC, just like all other affected stakeholders, cannot be expected to consider your recent request for additional PCF in isolation of these critical factors which sit at the heart of THL's future viability and sustainability. Like any other lender would do in similar circumstances, the IDC is obliged and would be acting within its statutory mandate to take on board all the factors recently brought to its attention and which lie at the root cause of the liquidity constraints. The IDC questions why these factors were not addressed immediately after the*

*adoption of the Plan (on 11 January 2024), but left to be addressed in the context of a critical liquidity constraint first postulated on 25 September 2025. It appears that the implementation of the Plan was conducted on the basis that the systemic challenges and headwinds faced by the business were left to be ironed out and address (sic) after the acquisition of ownership of the THL business and assets.*

*10. Did the BRPs consider alternative sources of additional funding to plug the interim funding gap? Your correspondence is regrettable in that it portrays, in the first instance, in the obligation in the part of the IDC to eject the additional funding to avoid the liquidation of THL, and in the second instance, advance the additional funding within the context of all the policy and economic headwinds and challenges being faced by THL. The IDC acknowledges and is alert to the broader liquidation consequences ( loss of jobs, impact to small scale sugar cane farmers, the impact on the sugar industry and so on), but it cannot be expected to turn a blind eye on the most important consideration and that is the future financial viability and sustainability of THL. To do so would be reckless. The IDC is of the view that the BRPs should have crafted a sustainable strategy for the viability of the THL business in the face of all the headwinds and challenges, and ensured the operating environment was sustainable before termination of the business rescue.*

*...*

*12. While the landscape may have shifted, many of the issues attributed to that shift should have been addressed earlier during the course of implementation of the Plan*

...

16. ... None of the monthly statutory reports allude to an anticipated liquidity shortfall or any of the challenges alluded to in correspondence addressed by the BRPs and Vision Sugar.

28.2 A copy of this letter is already annexed to the Applicant's Founding Affidavit and marked "FA 26".

28.3 The importance of this letter is that it reinforces the contention that the BRPs had not alluded to any anticipated liquidity shortfall or any challenges in its monthly statutory reports. It also highlights the fact that the BRPs had been constrained to and ought to have considered alternate sources of additional funding and should have acted sooner. This supports the complaints raised by all the affected parties.

## THL REMAINS CAPABLE OF RESCUE

29.

The BRPs have not attached detailed financial information to its Founding Affidavit which evidence the allegation of commercial insolvency. The BRPs expect this Court to rely on its mere *ipse dixit* in finding commercial insolvency. This is wholly untenable. The BRPs must have annual financial statements (it need not be audited). How else

are the BRPs making decisions in the absence of understanding of the real-time financial situation of THL.

30.

It is clear from the Applicant's Founding Affidavit that despite the alleged crisis that THL had only R 300 million to cover approximately R 750 million in payments, that the BRP had stated that it was anticipated that the month-end challenges would still be overcome "through careful management of collection of sales proceeds and strict sequencing of cash payments, albeit with only approximately R 11 million of headroom".

30.

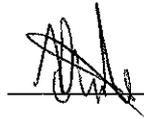
Abrina has already, in its previous affidavits, also set out the basis upon which THL is capable of being rescued. Apart from this RGS has also made an alternate proposal to provide security for further funding, which is also an alternative available to the BRPs and which will obviate the need for liquidation proceedings.

31.

No objective financial evidence has been provided to demonstrate that THL is commercially insolvent as alleged by the BRPs.

For the reasons set forth in this affidavit and the other affidavits filed of record by Abrina and in light of the allegations made by RGS in its counter application, the above Honourable Court is urged to exercise its discretion and to refuse liquidation and the order for the termination of business rescue with costs on a punitive scale on scale C. The Applicant should be directed to pay the costs of this application on a punitive scale by virtue of their conduct and the manner in which this application was brought.

WHEREFORE I pray that the Application be dismissed with costs on a punitive scale and on scale C.



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**DEPONENT**

I **CERTIFY THAT** the Deponent has acknowledged that she knows and understands the contents of this affidavit, which was signed and sworn to before me at <sup>Umhlanga</sup> on this 4<sup>th</sup> day of March 2024, the provisions of Regulations contained in Government Notice R1258 dated July 1972 as amended, having been duly complied with.



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**COMMISSIONER OF OATHS**

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