

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

Twelfth Respondent

ALL REGISTERED GROWERS

Thirteenth to Twenty-Three
Thousandth RespondentsTHE AFFECTED PERSONS IN
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DATED AT JOHANNESBURG 26 APRIL 2023



WERKSMANS ATTORNEYS

Applicants' Attorneys

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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**

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

CASE NO.: Du472/2023

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

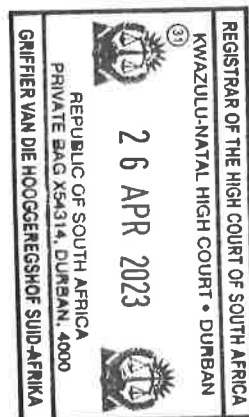
SOUTH AFRICAN FARMERS'
 DEVELOPMENT ASSOCIATION NPC Sixth Respondent

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

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 on 13 JUNE 2023, 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, on _____ 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 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 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,

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 twenty (20) 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.

DATED AT JOHANNESBURG 26 APRIL 2023



WERKSMANS ATTORNEYS

Applicants' Attorneys

11th Floor, The Central

96 Rivonia Road, Sandton

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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

**Service via email
as per agreement**

JRodd@coxyeats.co.za

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:

**GLEDHOW 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 _____, 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 (15) 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 / sgast@werksmans.com

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