

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

CASE NO.: 04472/2023

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 IN TERMS OF RULE 16A

TAKE NOTICE THAT the applicants hereby give notice in terms of Rule 16A that they have raised a constitutional issue for determination by the above Honourable Court in their Notice of Motion dated 26 April 2023, filed simultaneously herewith.

TAKE NOTICE FURTHER THAT the constitutional issues raised are as follows -

- 1 Whether, properly interpreted, the Sugar Industry Agreement, adopted in terms of section 4 of the Sugar Act, is an "agreement" within the meaning of section 136(2)(a)(i) of the Companies Act 71 of 2008 (read with section 1 of the Companies Act);
- 2 Whether the third to fifth applicants consequently have the power to suspend the first applicant's payment obligations that arise under the Sugar Industry Agreement and which become due during its business rescue proceedings, for the duration of the business rescue proceedings;

3 If not -

3.1 whether section 136(2)(a)(i) of the Companies Act is irrational, unconstitutional and consequently invalid to the extent that it does not apply to payment obligations that arise under a regulatory regime; and

3.2 the appropriate remedy to cure that constitutional defect.

TAKE NOTICE FURTHER THAT any party with an interest in the above constitutional issues may, with the written consent of all the parties to the proceedings, given not later than twenty (20) days after the filing of this notice, be admitted therein as *amicus curiae* upon such terms and conditions as may be agreed upon, in writing, between the parties.

TAKE NOTICE FURTHER THAT the written consent referred to above shall, within five (5) days of it having been obtained, be lodged with the registrar and the *amicus curiae* shall, in addition to any other provision, comply with the times agreed upon for the lodging of written argument.

TAKE NOTICE FURTHER THAT the terms and conditions referred to above may be amended by the court.

TAKE NOTICE FURTHER THAT if the interested party is unable to obtain the written consent as contemplated herein, they may, within five (5) days of the expiry of the

twenty day period prescribed above, apply to the Court to be admitted as an *amicus curiae*, and shall in its application –

- a) briefly describe the interest of the *amicus curiae* in the proceedings;
- b) clearly and succinctly set out the submissions to be advanced, their relevance to the proceedings and the party's reasons for believing that they will assist the court and be different from those of the parties; and
- c) serve the application on all parties to the proceedings.

TAKE NOTICE FURTHER THAT any party to the proceedings who wishes to oppose an application to be admitted as an *amicus curiae* shall file an answering affidavit within five (5) days of the service of such application on such party. The answering affidavit shall clearly set out the grounds of opposition.

TAKE NOTICE FURTHER THAT the court may dispense with any of the requirements of Rule 16A if it is in the interests of justice to do so.

KINDLY PLACE this notice on the noticeboard designated for this purpose and ensure that the notice remains on that notice board for a period of twenty (20) days, whereafter you, the Registrar, shall endorse the notice to state on which day the notice was placed on the notice board and, on the expiry of the twenty (20) day period, place such endorsed notice in the Court file.

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