

ESOR CONSTRUCTION (PTY) LTD (UNDER RECEIVERSHIP)

STATUS REPORT OF THE RECEIVER FOR CREDITORS IN TERMS OF THE BUSINESS RESCUE PLAN ADOPTED ON 5 MARCH 2019.

1. Esor Construction (Pty) Ltd ('the company') was placed under Business Rescue in terms of Section 129(1) of the Companies Act 2008 ("the Act") on 13 August 2018.
2. Johannes Frederick Klopper and Liebenberg Dawid Ryk van der Merwe were licensed by the Commission in respect of the company and appointed as Business Rescue Practitioners (BRPs) to this company on 14 August 2018 in terms of Section 138 of the Act. The BRPs published the Business Rescue Plan on 11 February 2019 and which was amended on 25 February 2019.
3. At the meeting in terms of section 151 of the Act to vote upon the Business Rescue Plan ('the BR Plan') on 5 March 2019 the statutory majority of creditors adopted the Plan and the BRP's filed a Notice of Substantial Implementation in terms of which BR proceedings ended on 8 March 2019. The BRPs role therefore ceased on 8 March 2021 and changed to that of Receiver for Creditors pursuant to the adopted BR Plan.

THE EFFECT OF THE ADOPTED BR PLAN

4. Upon the adoption of the BR Plan it became final and binding in law as is provided for in terms of section 152 (4) of the Act.
5. Paragraph 4.8 of the adopted BR Plan provides as follows:
"In preparing this BR Plan and in formulating the proposals contained therein the BRPs have made the necessary forecasts with respect to asset realisations and the total value of Claims of Creditors. These forecasts and estimates may change as Assets are realised and Creditors prove their Claims against The Company. Whilst this BR Plan estimates the likely outcomes for Affected Persons, the forecasts are by their very nature uncertain and the ultimate outcome may therefore differ from the forecast contained in the Business Rescue Plan."
6. The contents of this specific provision as set out in paragraph 4.8 of the adopted BR Plan are therefore clear in that it states that whatever was forecasted and estimated in the BR Plan may change as assets are realised and claims proved.

7. The BRP Plan also makes it clear that forecasts are by their very nature uncertain and the ultimate outcome may differ.
8. As all the terms of the BR Plan are binding in law in terms of the abovementioned section 152 (4) of the Act this paragraph 4.8 is likewise binding on all affected persons.

WHAT DID THE ADOPTED BR PLAN PROVIDE WOULD BE AVAILABLE TO UNSECURED/CONCURRENT AND PCF CREDITORS?

9. As was stated in paragraph 15.1 of the adopted BR Plan the primary objective of the BR Plan was to rearrange the Company's financial affairs and that the claims of collectively all creditors were limited to sharing in the proceeds of the Group Company Loan ("GCL") claims.
10. The GCL's were set out in paragraph 7.4 of the adopted BR Plan as follows:

7.4. Group Company Loans (GCL) receivable;

7.4.1. The Company's financial records reflect the following loans to group companies and unsecured loans;

7.4.1.1.	Esor Africa Proprietary Limited: -	R 18,566,000
7.4.1.2.	Esor Uitvlugt Proprietary Limited: -	R 17,763,000
7.4.1.3.	Safdev Tanganani Proprietary Limited: -	<u>R 31,566,000</u>
	SUBTOTAL	<u>R 67,895,000</u>

11. We report as follows on the collection of the GCL:

12. **ESOR AFRICA**

The major asset of Esor Africa (Pty) Ltd (Under Business Rescue) ("Esor Africa") was the immovable property that it owned, and which is situated in Germiston, being Erf 64 Activia Park ("the Germiston property").

The value thereof was determined by the valuers that the BRP's appointed to be some R23,9 million. It was at the time thought that the property might realise even more by virtue of its location close to OR Tambo International Airport.

Esor Africa also owns a further property situated at Erf 64, Forrest Hills, KZN ("the KZN Property") and that property was valued at R 4.7 million.

After the adoption of the BR Plan in March 2019 we immediately embarked on marketing the Germiston and KZN properties. The difficulties encountered in 2019 in procuring offers are all contained in the status reports in relation to Esor Africa.

We received no offers for the KZN property, instructed auctioneers and held an auction of the Germiston property in October 2019. The highest bid was some R12m and it was found to be unacceptable.

In the meantime, it transpired that the liabilities of Esor Africa were not limited only to the loan of R18 566 000 due to Esor Construction and the amount of R8 000 000 owing to Geomer. It transpired that, by virtue of suretyships and guarantees that subsequently came to our attention, Credit Guarantee Insurance Company (CGIC) had an additional claim of R20 075 000 against Esor Africa. It also owed the Ekurheleni and eThekweni Municipalities R121 842 and R193 330 respectively.

Eventually, in July 2020 during the Covid 19 lockdown and pursuant to a decision to sell the Germiston property at best and in terms of an adopted BR Plan and the Germiston Property was sold for R12 500 000, at least some R10.4m less than what the valuator estimated the value to be.

Registration of transfer of the Germiston property was registered in early January 2021 and the proceeds were distributed to its creditors in the first week of February. However, by virtue of the extra claims filed against Esor Africa and the low realisation the estimated outcome as set out above did not materialise.

In the meantime, in February this year, the KZN Property was sold for R2,8m by public auction and the process of registration of transfer is under way. The best offer that we received since 2019 was R600 000.

13. ESOR UITVLUGT

Paragraph 19 of the BR Plan provided that the Receiver for Creditors would procure that the company's interest in Esor Uitvlugt be realised.

It is however clear from the status reports submitted to date that there has thus far been no interest shown by any parties in submitting proposals in relation to Esor Uitvlugt.

The writer is also the BRP of this entity and upon engagement with its major creditor by far, Investec, it was agreed in early 2020 that the process would be allowed to unfold and that we would jointly seek solutions.

However, with the onset of the Covid pandemic a year ago discussions with Investec was not that regular and very little interest was shown by property developers, except for the occasional telephonic enquiry.

Nothing material has ever been presented to us. We continue to seek solutions and should anything materialise for creditors from this source creditors will be informed accordingly.

14. SAFDEV TANGANANI

Paragraph 19.1 of the adopted BR Plan provides the company will endeavour to proceed with discussions to further the rights to the "Diepsloot Development" vesting in this entity and that the Receiver for Creditors shall procure that the first R5m from this development accrue to creditors in terms of the BR Plan.

During the course of the last year and during lockdown we were approached by a party to enter into a sale of shares transaction and which agreement was entered into towards the end of

2020. The proceeds of a sale of shares transaction that was entered into and that we reported on previously secure the first R5m earmarked for creditors as set out in paragraph 19.1 of the BR Plan.

However, the purchaser in terms of that transaction has still not as yet made payment because the agreement lapsed as all the conditions precedent could not be fulfilled.

This is because written confirmation has to date not yet been received from the Department of Human Settlements of the continued existence of the land development agreement and which was a condition precedent which was not fulfilled in time.

The purchaser in terms of the sale of the shares transaction informed the company's management that it is doing its best to revive the agreement.

There is, in addition, an ongoing matter between the company and the Competition Commission in respect of which we attended a pre-hearing with the Competition Commission Tribunal on Thursday 3 December 2020. A hearing date for 26 May 2021 was determined. The issues under investigation by the Competition Commission relate to activities of the company going back some fifteen years ago. It would therefore appear that Receivership will continue until at least June 2021 pending the finalisation of the Competition Commission matter.



J F KLOPPER - RECEIVER FOR CREDITORS

Date: 31 March 2021