



ARNOTOPCO

Updated Circular Fourteen: To All Known Creditors and Other Affected Persons of Arnot Opco Proprietary Limited (Registration Number: 2019/072282/07) (In Business Rescue) (the “Company”)

27 July 2023

Dear Sir/Madam

1. Introduction

- 1.1 On 14 July 2023, the business rescue practitioner (“**BRP**”) of Arnot Opco Proprietary Limited (**‘the Company’**) published a proposed business rescue plan (the **‘Plan’**) for the Company.
- 1.2 Subsequent to that, the BRP on the same day issued a notice convening a meeting of creditors in terms of section 151 of the Companies Act, 2008, as amended (the **‘Companies Act’**) for creditors to consider and vote on the proposed Plan (the **‘s151 Meeting’**).
- 1.3 The s151 Meeting will be held electronically on Friday, 28 July 2023 at 10h00 via Microsoft Teams.
- 1.4 A Microsoft Teams hyperlink providing access to the s151 Meeting was circulated by Tsakisani Machebe on 18 July 2023. Should you not have received the meeting invite and the Microsoft Teams hyperlink, kindly contact Tsakisani Machebe at tsakisani@gcs-sa.co.za before the s151 Meeting on 28 July 2023.
- 1.5 The purpose of this circular is to explain in simple terms or simplify the proceedings on 28 July 2023 as well as to summarise the offers received by the BRP to enable the creditors to prepare for the s151 Meeting, the meeting to vote on the offers and the meeting to consider the BRP’s additional remuneration.

2. S151 Meeting

- 2.1 The first step would be to hold the s151 Meeting. The main purpose of the s151 Meeting is, firstly for the BRP to present the published Plan to the creditors and other affected persons, and secondly, for creditors to consider the published Plan and either vote for or against the Plan.
- 2.2 The s151 Meeting will be held electronically via Microsoft Teams.
- 2.3 Creditors and other holders of voting interest including employees’ representatives are requested to join the meeting at 09h45 to sign the attendance register on the Meeting Chat - by writing their full names and the name of the creditor that they will be representing.
- 2.4 Given the large number of stakeholders, creditors are encouraged to raise questions on the Microsoft Teams Chat during the meeting. The BRP will attempt to deal with as many questions

as



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possible, however, priority will be given to questions pertaining to the consideration of the Plan and the adoption thereof.

2.5 The s151 Meeting will start at exactly 10h00 and will be chaired by the BRP. The agenda for this meeting will be as follows:

2.5.1 An introduction of the proposed Plan for consideration by creditors and a presentation of the salient terms and conditions of the Plan.

2.5.2 Confirmation that the Business Rescue Practitioner continue to believe that there remains a reasonable prospect of the Company being rescued as contemplated in the Companies Act.

2.5.3 The consequence for creditors if the Plan is adopted or rejected.

2.5.4 A presentation or address by the employees' representative should they wish to address or make such presentation.

2.5.5 Discussions and conduction of a vote on the following motions:

2.5.5.1 to amend the Plan, in any manner moved and seconded by the holders of creditors voting interests, and satisfactory to the BRP; or

2.5.5.2 directing the BRP to adjourn the meeting in order to revise the Plan for further consideration.

2.5.5.3 if no motion in terms of 2.5.5.2 above is put forward or carried, call for a vote for the preliminary approval of the Plan, as amended if applicable.

2.5.5.4 Results of the preliminary vote.

2.5.5.5 Report on the outcome of the vote for adoption of the Plan.

2.6 The voting for or against the adoption of the Plan will be by way of proxy. A proxy form was circulated to all the creditors on 14 July 2023. This proxy form has since been revised or amended and attach hereto the revised or amended proxy form as **Annexure A** for ease of reference. Creditors are encouraged to submit their proxy forms or votes by no later than Thursday, 27 July 2023 at 17h00 in order to limit the time collating and calculating votes on 28 July 2023.

2.7 Completed and signed proxies can be emailed to ArnotOpcobr@gcs-sa.co.za.

3. **Summary of the Offers**

3.1 Since the commencement of Business Rescue, the BRP has received 4 (four) expressions of interests from interested parties for the acquisition of the business as a going concern or for the acquisition of the entire issued share capital or majority shareholding in the Company.

3.2 Non-disclosure agreements were concluded with the 4 (four) interested parties and were given access to the data room to enable them to conduct a due diligence on the operational, financial, technical, environmental, and legal aspects of the Company. None of the 4 (four) interested

parties submitted offers. However, post the conclusion of the term sheet with Siphesihle SS Mining Proprietary Limited (“**SSS Mining**”) and 90-day exclusivity granted to SSS Mining, all the engagements with potential interested parties were suspended.

- 3.3 On the other hand, it should be noted that, since the commencement of Business Rescue proceedings, the Shareholders have been engaging with various interested parties as part of the Shareholder led initiative to raise post-commencement finance (“**PCF**”) or find a strategic equity partner with the requisite technical expertise, capital and management expertise. This Shareholder led initiative was excluded from the 90-day exclusivity period granted to SSS Mining.
- 3.4 Consequently, 3 (three) expressions of interests were received from 3 (three) interested parties. All 3 (three) interested parties signed the non-disclosure agreements and were granted access to the data room to enable them to conduct a due diligence on the operational, financial, technical, environmental, and legal aspects of the Company. All 3 (three) interested parties were requested to submit their binding offers by no later than 15 June 2023 at 17h00 addressing the following:
- (a) whether the transaction will involve the acquisition of the assets and business of, or shareholding in the Company;
 - (b) the purchase consideration setting out full reconciliation of the bridge between enterprise value and equity value. The purchase consideration must be provided in South African Rands and as a price point payable fully in cash subject to fulfilment of conditions precedent.
 - (c) the form in which the purchase consideration will be settled – in other words, in cash or otherwise;
 - (d) if not in cash, how will the purchase consideration be converted or realised in cash;
 - (e) the binding offer must clearly set out proposal for the pre-BR claims;
 - (f) the working capital requirements of the Company and how and when these will be advanced to the Company;
 - (g) all technical expertise and resources experience and track record, aimed at turning around the operations of the Company and continuing with its Business operations;
 - (h) all internal approvals required in respect of any proposed transaction envisaged and the timing to obtain such approvals;
 - (i) a commitment to retain Employees in accordance with the provisions of section 197 of the LRA;
 - (j) an undertaking to conclude the proposed transaction, in a timely manner; and
 - (k) additional benefits that will contribute towards accelerated and sustainable growth of the business and reduction of expenses, for example, whether additional customers will be introduced to the Company with the consequential increase in sales volumes; whether certain operational expenses can be merged into existing infrastructure so as to reduce the operating cost and thereby increase profitability.
- 3.5 On 15 June 2023, the BRP received 3 (three) binding offers from the 3 (three) interested parties. The 3 (three) interested parties have already conducted and concluded due diligence on the operational, financial, technical, environmental, and legal aspects of the Company.

3.6 It should be noted that on 03 July 2023, the BRP received an expression of interest from Cometa Trading SA (“**Cometa Trading**”). Subsequent to this, the expression of interest was presented to the Creditors Committee on 07 July 2023, where it was recommended that Cometa Trading be given an opportunity to participate in the sales or disposal process. A non-disclosure agreement was concluded, and Cometa Trading was granted access to the data room to enable them to conduct a due diligence on the operational, financial, technical, environmental, and legal aspects of the Company. They were also requested to submit their binding offer by no later than Friday, 21 July 2023 at 17h00. However, on 21 July 2023, they requested for further extension and their binding offer was ultimately submitted on 25 July 2023 at 13h00.

3.7 The offers can be summarised as follows:

3.7.1 **Offer A – Ndalamo Offer**

3.7.1.1 The first binding offer received by the BRP is from Ndalamo Coal Proprietary Limited (“**Ndalamo**”), a wholly owned subsidiary of Ndalamo Resources Proprietary Limited for the proposed 100% acquisition of the Business of the Company for a price consideration of **R435 000 000.00 (four hundred and thirty five million Rand)**. The price consideration of R435 000 000.00 (four hundred and thirty five million Rand) is made up of:

3.7.1.1.1 **R70 000 000.00 (seventy million Rand)** to settle creditors claims, both pre and post Business Rescue, to be distributed at the discretion of the BRP; and

3.7.1.1.2 **R365 000 000.00 (three hundred and sixty-five million Rand)** as post commencement funding (“**PCF**”) to fund:

- the refurbishment of the existing plant and related infrastructure;
- re-capitalisation and development of underground workings with related surface infrastructure;
- acquisition of surface rights; and
- establishment of the opencast mining operations.

3.7.1.1.3 The PCF amount of R365 000 000.00 (three hundred and sixty-five million Rand) will be converted into equity. The PCF amount is only repayable by the Company to Ndalamo if the proposed transaction fails for any reason whatsoever.

3.7.1.1.4 The R70 000 000.00 (seventy million Rand) to settle creditors claims for both pre and post will be paid payable on section 11 Ministerial approval.

3.7.1.2 In terms of the proposed binding offer by Ndalamo (“**Ndalamo Offer**”), Ndalamo will establish a new entity or NewCo to acquire the business of the Company, which includes:

3.7.1.2.1 all the assets;

3.7.1.2.2 the Rehabilitation trust;

- 3.7.1.2.3 the Rehabilitation liabilities; and
- 3.7.1.2.4 Employee related liabilities.
- 3.7.1.3 NewCo will be held 100% by Ndalamo. Ndalamo is willing to dilute its 100% shareholding in NewCo to 75% to cater for the participation of Arnot Affected Employees Trust or any trust or scheme to benefit community and employees. This dilution will be effective once Ndalamo has been confirmed as the preferred and exclusive bidder for the proposed transaction.
- 3.7.1.4 The payment of the purchase price by Ndalamo will be conditional on various regulatory conditions being fulfilled, including section 11 Ministerial approval in terms of the Ministerial and Petroleum Resources Development Act 28 of 2002 (“MPRDA”).
- 3.7.1.5 Until such time as the section 11 Ministerial approval is received, Ndalamo will provide PCF to restart the Arnot Mine and will enter into a permissible PCF agreement and other relevant transaction agreements to ensure that Ndalamo has management control (operational and financial control) of the Arnot Mine with effect from date of approval of the Plan whereby Ndalamo is nominated as the successful bidder.
- 3.7.1.6 Ndalamo requires the following security for PCF to be provided to restart the Arnot Mine prior to section 11 Ministerial approval:
 - 3.7.1.6.1 The plant infrastructure and related logistics infrastructure owned by the Company;
 - 3.7.1.6.2 Any and all surface rights held in the name of the Company;
 - 3.7.1.6.3 The mining rights and prospecting rights held by the Company; and
 - 3.7.1.6.4 The underground workings and all supporting infrastructure.
- 3.7.1.7 The Ndalamo Offer is subject to the following conditions:
 - (a) Security required for PCF as set out in 3.7.1.6 above;
 - (b) Approval of the binding offer by the BRP and Ndalamo being nominated as the preferred and successful bidder for the transaction on an exclusive basis;
 - (c) Pre-Competition Commission approval, Ndalamo require a PCF agreement between NewCo and the Company, which is to be regulated under Business Rescue as to ensure that there is a control on costs and disbursement of the PCF provided by NewCo. The conditions of this agreement are to be agreed between the parties upon confirmation of Ndalamo as the successful bidder of the proposed transaction;
 - (d) Post-Competition Commission Ndalamo enters into the requisite management agreements for the management and control of the business and operations during the interim phase, pre-regulatory approval;
 - (e) Execution of the necessary transaction agreements; and

(f) Ndalamo's receipt of all regulatory approvals relating to the transfer of the mine assets including but not limited to, Competition Commission approval and the section 11 Ministerial approval.

3.7.1.8 Ndalamo is in advanced stages of engagement for the potential solution for the rectification plan for Eskom shortfall, this will ensure sufficient return to significantly reduce the Eskom liability for potential contractual penalty. It will also have enough margins which will be used towards fast payment of the purchase price.

3.7.1.9 NewCo will purchase coal suitable for supply to Eskom under the Coal Supply Agreement between the Company and Eskom. The profit is to be split on a 70/30 basis between NewCo and the Company. The 30% margin will be a prepayment which is fully managed by the BRP, that will be used to reduce the PCF requirements on a monthly basis. The rectification sales is to commence within one week after the execution of all transaction agreements.

3.7.1.10 In order to illustrate the sequence of payments outlined above, the table below provides an illustration and estimate of the potential distribution to Creditors of the Company in terms of the Plan. Creditors and other affected persons must however note that this table is no more than an illustration of the waterfall and is by no means binding on the BRP or its Advisors. Furthermore, the table assumes a transaction value, derived from the Ndalamo Offer, of R 70 000 000.00:

Waterfall	Amount
Proceeds realised on disposal	R70 000 000.00
BRP remuneration and expenses (s135(3))	Nil
Estimate costs of Business Rescue proceedings (s135(3))	Nil
Employees post-Commencement Date Claims (s135(3)(a) and 135(1))	(R2 103 636.00)
Post Commencement Claims	(R38 994 253.74)
Employee's pre-Commencement Date Claims	(R4 139 091.00)
Unsecured or concurrent creditors (including subordinated creditors)	R24 766 019.26

3.7.1.11 The illustration above postulates:

- a distribution in full settlement of employee post and pre-commencement claims;

- the BRP's fees and expenses to be paid by Ndalamo on section 11 Ministerial approval and thus have been excluded from the payment waterfall; and
- that Wescoal Mining Proprietary Limited ("Wescoal"); Ingwenya Minerals Processing Proprietary Limited ("Ingwenya"); Boipelo Mining Contractors Proprietary Limited (BMC") and AmandlaTM Group Proprietary Limited ("Amandla"), have all agreed not to participate in the dividend payout or distribution provided that the Ndalamo Offer is supported by creditors. Therefore, the projected waterfall postulated above exclude the pre and post business rescue claim for Wescoal (R91 728 699,70 and R12 665 640,00 respectively); the pre and post business rescue claim for Ingwenya (R21 957 811,12 and R17 438 034,17 respectively); the pre and post business rescue claim for BMC (R41 566 091,18 and R21 068 555,01 respectively) and the pre and post business rescue claim for Amandla (R26 202 863,79 and Rnil respectively). This exclusion of claims thereby allows for a higher distribution to settle the remaining unsecured or concurrent creditors.

3.7.1.12 On the figures postulated on the table above, this will result in an estimated Distribution to unsecured or concurrent Creditors of **17.5c (seventeen point five) cents** in the Rand.

3.7.2 **Offer B – Mashwayi Offer**

3.7.2.1 The second binding offer received by the BRP is from Mashwayi Consortium Opco ("**Mashwayi**"), a special purpose vehicle to be incorporated, which shall be 100% owned by another special purpose vehicle for this purpose ("**Mashwayi Consortium Holdco**"). A further special purpose vehicle which will also be 100% owned by Mashwayi Consortium Holdco, will be incorporated for purposes of ultimately acquiring the land on which the mining operations of the Company are conducted ("**Mashwayi Consortium Propco**").

3.7.2.2 The shares in Mashwayi Consortium Holdco will be held as follows:

- Mashwayi Projects Proprietary Limited – 60%; and
- Arnot Investco Proprietary Limited – 40%.

3.7.2.3 In terms of the proposed binding offer by Mashwayi, ("**Mashwayi Offer**") Mashwayi will acquire the Business of the Company as a going concern for a purchase consideration of **R225 000 000.00 (two hundred and twenty-five million Rand)**, comprising of:

3.7.2.3.1 all associated liabilities,

3.7.2.3.2 employees,

3.7.2.3.3 specified commercial contracts; and

3.7.2.3.4 specified rights (including rehabilitation trust balances and assets) in relation to the Arnot Mine.

3.7.2.4 The purchase price is payable in cash on a debt-free basis and contemplates the settlement in full of the creditor's post-commencement claims and the balance to be distributed equally to the pre-business rescue creditors claims.

- 3.7.2.5 The purchase consideration is payable in cash as follows:
- 3.7.2.5.1 25% (**R56 250 000.00**) of the purchase consideration shall be paid into an interest-bearing escrow account administered by a designated escrow agent nominated by both Mashwayi and the Company on the approval of the proposed transaction by the creditors.
 - 3.7.2.5.2 The initial payment will be on the terms to be agreed upon with the Company, and will be held as a non-refundable deposit in the event that the proposed transaction does not materialise due to the wilful conduct of Mashwayi; and
 - 3.7.2.5.3 The remaining 75% of the purchase consideration will be paid on the closing date of the proposed transaction or once all the approvals have been granted and all the conditions have been fulfilled.
- 3.7.2.6 In addition to the purchase consideration Mashwayi undertakes to make a provision for the transaction costs associated with the proposed transaction and the business rescue costs including payment of a success fee. An amount of **R10 000 000.00 (ten million rand)** will be made available to cover the transaction and business rescue costs.
- 3.7.2.7 Pending the approval or conditions of the offer being fulfilled, Mashwayi proposes that between date of signature of the definitive agreements and the date in which all the approvals are granted or conditions being fulfilled ("**Interim Period**"), Mashwayi proposes the following in order for the Company to meet its working capital requirements:
- 3.7.2.7.1 Entering into a coal supply agreement with the Company in order to provide coal rectification to Eskom on behalf of the Company. The coal will be used by the Company to remedy its deficit in terms of the Coal Supply Agreement with Eskom. Out of the coal rectification process by Mashwayi, the Company will make a R50.00 per ton margin. The coal rectification will commence within 30 days after signing the definitive agreements.
 - 3.7.2.7.2 To ensure certainty with regards to the Company's return in terms of the rectification agreement, Mashwayi guarantees that it shall supply no less than 65 0000 (sixty-five thousand) tonnes per month for the duration of the rectification agreement. In addition, Mashwayi guarantees that the Company will receive no less than 1 000 000 (one million) tonnes ("**Committed Tonnage**") during the term of the rectification agreement.
 - 3.7.2.7.3 In the event that the approvals or conditions are fulfilled before the delivery of the Committed Tonnage in terms of the rectification agreement, the balance or undelivered coal will be converted to a royalty payment to the Company up to 100 000 (one hundred thousand) and no less than 65 000 (sixty-five thousand) tonnes per month. The royalty fee will be paid into an account nominated by the BRP. A guaranteed amount of **R50 000 000.00 (fifty million Rand)** will be generated by Mashwayi to the Company as part of the rectification agreement or royalty fee.

- 3.7.2.7.4 If at the end of the Interim Period, it is determined that the creditor dividend will be less than 50c/Rand, Mashwayi undertakes to increase the Committed Tonnage in order to account for the short fall; and
- 3.7.2.7.5 In addition to the coal rectification agreement and subject to an assessment as to whether there will be a violation of the pre-implementation prohibition in terms of the Competition Act, Mashwayi proposes that an interim-joint management agreement between the Company and Mashwayi is concluded in order to regulate and manage the affairs of the Company during the Interim Period so as to ensure the proper upkeeping of the assets.
- 3.7.2.7.6 The interim arrangement will also include contract mining agreement in terms of which Mashwayi will be contracted to undertake opencast and underground mining.
- 3.7.2.7.7 The high-level terms of the interim-management agreement will be *inter alia* the following:
 - 3.7.2.7.7.1 Mashwayi will fund the operations of the Company including all running costs. In the event that the proposed transaction fails for any reason whatsoever, the funds disbursed will be converted to PCF;
 - 3.7.2.7.7.2 Mashwayi will assume all treasury and procurement functions;
 - 3.7.2.7.7.3 certain reserved matters will require the approval of Mashwayi before being actioned or implemented;
 - 3.7.2.7.7.4 Mashwayi shall be granted extensive information and access rights in relation to the Company and its business;
 - 3.7.2.7.7.5 Mashwayi and the BRP will discuss measures to cut or reduce costs including suspension of contracts;
 - 3.7.2.7.7.6 Mashwayi will enter into negotiations with the Company and Eskom in order to secure access to the land where operations will be conducted which is owned by Eskom. Mashwayi is amenable to paying any reasonable deposit required by Eskom with the aim of purchasing the land outright on completion of the proposed transaction.
 - 3.7.2.7.7.7 Mashwayi and the Company will share the revenue generated from opencast and underground mining at 10 Shaft on a 70/30 split in favour of Mashwayi;
 - 3.7.2.7.7.8 Mashwayi and the BRP to agree on management fee to be paid to Mashwayi; and
 - 3.7.2.7.7.9 any revenue generated by the Company will be paid into an account nominated by Mashwayi acting as paymaster.

3.7.2.8 In order to illustrate the sequence of payments outlined above, the table below provides an illustration and estimate of the potential distribution to creditors of the Company in terms of the Plan. Creditors and other affected persons must however note that this table is no more than an illustration of the waterfall and is by no means binding on the BRP or its Advisors. Furthermore, the table assumes a transaction value, derived from the Mashwayi Offer, of R275 000 000.00:

Waterfall	Amount
Proceeds realised on disposal	R275 000 000.00
BRP remuneration and expenses (s135(3))	Nil
Estimate costs of Business Rescue proceedings (s135(3))	Nil
Employees post-Commencement Date Claims (s135(3)(a) and 135(1))	(R2 103 636.00)
Post Commencement Claims	(R90 166 482.92)
Employee's pre-Commencement Date Claims	(R4 139 091.00)
Unsecured or concurrent creditors (including subordinated creditors)	R178 590 790.08

3.7.2.9 The illustration above postulates:

- a distribution in full settlement of the employee post and pre-commencement claims;
- settlement in full of the post-commencement claims; and
- the BRP's fees and expenses to be paid by Mashwayi.

3.7.2.10 On the figures postulated on the table above, this will result in an estimated Distribution to unsecured or concurrent Creditors of **55.5c (fifty-five point five) cents** in the Rand.

3.7.3 **Offer C – NG Global Offer**

3.7.3.1 The third binding offer received by the BRP is from NG Global Consortium, which is made up of the NG Global Energy Solutions Proprietary Limited and Strategic Partners. If successful, NG Global Consortium (“**NG Global**”) will incorporate 2 (two) new private entities, namely, a bidding company for purposes of entering into definitive transaction documents in relation to the proposed transaction (“**BidCo**” or “**NG Global Consortium HoldCo**”); and an operating company, which will be the subsidiary of the

NG Global Consortium HoldCo, for purposes of undertaking the transferring of assets and certain liabilities from the Company (“**NG Global Consortium Opco**”).

3.7.3.2 In terms of the binding offer from NG Global, it will through BidCo or NG Global Consortium HoldCo acquire the assets and certain liabilities of the Company as a going concern for R317 824 677.66 (three hundred and seventeen million eight hundred and twenty-four thousand six hundred and seventy seven Rand and sixty six cents) (“NG Global Offer”), which *inter alia* includes the following:

3.7.3.2.1 Employees;

3.7.3.2.2 Mining Right;

3.7.3.2.3 Water Use License;

3.7.3.2.4 All movable and immovable assets;

3.7.3.2.5 Rail and port allocation through quattrò;

3.7.3.2.6 Rehabilitation trust including Eskom’s obligation under settlement agreement; and

3.7.3.2.7 Eskom Coal Supply Agreement.

3.7.3.3 NG Global is committed to involving the Affected Employees Trust in the ownership of NG Global Consortium HoldCo by issuing 20% shares to the Affected Employees Trust, thereby ensuring that the former employees of Exxaro share in the benefits derived from these resources.

3.7.3.4 The purchase consideration of R317- ~~824 677.66000-000.00~~ (three hundred and seventeen million eight hundred and twenty-four thousand six hundred and seventy-seven Rand and sixty cents) will be applied towards the following:

3.7.3.4.1 Settlement of creditors pre-commencement claims; and

3.7.3.4.2 Settlement of creditors post-commencement claims

3.7.3.5 In terms of the NG Global offer, R250 000 000.00 (two hundred and fifty million Rand) of the purchase consideration will be used to settle creditors pre-commencement claims. Based on the current estimated creditors pre-commencement claims, NG Global is of the view that creditors will each receive a dividend of 75c in Rand towards pre-commencement claims.

3.7.3.6 The R250 000 000.00 (two hundred and fifty million Rand) to settle creditors pre-commencement claims will be paid as follows:

3.7.3.6.1 R150 000 000.00 (one hundred and fifty million Rand) payable on fulfilment of all condition precedents including section 11 Ministerial approval;

3.7.3.6.2 R50 000 000.00 (fifty million Rand) payable on the 1st anniversary from the date that all condition precedents are fulfilled and the section 11 Ministerial approval is granted; and

- 3.7.3.6.3 R50 000 000.00 (fifty million Rand) payable on the 2nd anniversary from the date that all condition precedents are fulfilled and the section 11 Ministerial approval is granted.
- 3.7.3.7 All creditors pre-commencement claim amounts will be deposited into a bank account nominated and managed by the BRP. In addition, a bank guarantee will be provided in respect of 2 (two) R50 000 000.00 (fifty million Rand) payment tranches.
- 3.7.3.8 R67 824 677.66 (sixty-seven million eight hundred and twenty-four thousand six hundred and seventy-seven Rand) of the purchase consideration will be used to settle the creditors post-commencement claims. This amount is capped at R67 824 677.66 (sixty-seven million eight hundred and twenty-four thousand six hundred and seventy-seven Rand) and is based on the post-commencement claims as at 31 May 2023.
- 3.7.3.9 The creditors post-commencement claims will be settled in 10 (ten) instalments commencing from the 1st anniversary of the fulfilment of all conditions precedent including section 11 Ministerial approval. This payment plan will be accelerated through ramp-up production.
- 3.7.3.10 In terms of the proposed binding offer from NG Global, it will provide post-commencement funding in the amount of R80 000 000.00 (eighty million Rand). The PCF amount ~~will accrue interest at prime plus 3% per annum and is not repayable. It will only be repayable in the event that the proposed transaction fails for any reason whatsoever, over 60 (sixty months) with a 6 (six) month capital payment holiday. The PCF is to be secured by cession of debtors, inventory and capital equipment.~~
- 3.7.3.11 The PCF amount will be split as follows:
- 3.7.3.11.1 R50 000 000.00 (fifty million Rand) will be used to fund the re-establishment of 10 shaft in order to unlock about 10 million tonnes of coal and deploy additional continuous miner section for underground production ramp-up.
- 3.7.3.11.2 R30 000 000.00 (thirty million Rand) trade finance facility to assist the Company with working capital requirement through realised margin i.e., the facility is intended to facilitate coal buy-ins and coal sales at a profit margin. It is envisaged that the Company will be able to purchase coal c 30 000 (thirty thousand) tons per month and make a profit margin of R70.00 to R80.00 per ton.
- 3.7.3.12 The PCF in respect of the 10 Shaft re-establishment will be available on a drawdown basis within 14 days from the adoption of the Plan by creditors. The funds will be paid into an escrow account between NG Global and the Company.
- 3.7.3.13 Pending the section 11 Ministerial approval and the fulfilment of all the condition precedents, NG Global proposes that an interim joint management committee be established for the operational and financial management of the affairs of the business as well as to oversee the execution of 10 shaft re-establishment.
- 3.7.3.14 NG Global intends to retain the services of the current mining contractor as the underground contractor for the 10 Shaft.

3.7.3.15 In addition, NG Global will supply 40 000 (forty thousand) tonnes of coal per month to the Company in order to provide coal rectification to Eskom at a delivered price of R570.00 per ton. As a result of the coal rectification process, the Company is likely to generate a profit margin of ±R60 per ton. This forms part of the R30,000,000 (thirty million Rand) trade facility referred to in 3.7.3.11.2 above.

3.7.3.16 In order to illustrate the sequence of payments outlined above, the table below provides an illustration and estimate of the potential distribution to creditors of the Company in terms of the Plan. Creditors and other affected persons must however note that this table is no more than an illustration of the waterfall and is by no means binding on the BRP or its Advisors. Furthermore, the table assumes a transaction value, derived from the NG Global Offer, of R317 824 677.66:

Waterfall	Amount
Proceeds realised on disposal	R317 <u>824 677.66</u>
BRP remuneration and expenses (s135(3))	Nil
Estimate costs of Business Rescue proceedings (s135(3))	Nil
Employees post-Commencement Date Claims (s135(3)(a) and 135(1))	(R2 103 636.00)
PCF Loan Repayment	(R80 000 000.00) Nil
Post Commencement Claims	(R90 166 482.92)
Employee's pre-Commencement Date Claims	(R4 139 091.00)
Unsecured or concurrent creditors (including subordinated creditors)	R120 670 447.50 <u>221 415 467.74</u>

3.7.3.17 The illustration above postulates:

- a distribution in full settlement of employee post and pre-commencement claims;
- full settlement of the post-commencement claims; and
- ~~— repayment of the full R80 000 000.00 PCF loan; and~~
- the BRP's remuneration and expenses to be paid by NG Global.

3.7.3.18 On the figures postulated on the table above, this will result in an estimated Distribution to unsecured or concurrent Creditors of **68 (sixty-eight) cents** in the Rand.

3.7.4 **Offer D – Cometa Offer**

- 3.7.4.1 The fourth binding offer received by the BRP is from Cometa Assets Proprietary Limited (“**Cometa**”). The offer from Cometa was received by the BRP on 25 July 2023. In terms of the proposed offer, Cometa will acquire the material assets of the Company for R290 071 084.00 (two hundred and ninety million and seventy-one thousand and eight four Rand). The purchase consideration is payable in cash, on a cash-free and debt-free basis. The purchase consideration was based on the latest disclosed PCF Creditors claim and will increase based on the updated balance to the end of July.
- 3.7.4.2 The offer (“**Cometa Offer**”) is to purchase all the material assets from the Company that are required to operate the mine as a going concern, which *inter alia* includes:
- 3.7.4.2.1 The equipment, infrastructure and other moveable assets owned by the Company and being capable of transfer;
 - 3.7.4.2.2 Outstanding inventory and trade receivables (as varied only in the ordinary course of business);
 - 3.7.4.2.3 Immovable properties;
 - 3.7.4.2.4 Rehabilitation guarantees (rehabilitation funds in Trust Accounts);
 - 3.7.4.2.5 The converted Mining Right;
 - 3.7.4.2.6 All legislative and regulatory approvals, and
 - 3.7.4.2.7 The Eskom Coal Supply Agreement.
- 3.7.4.3 Cometa will form a newly incorporated entity, the Cometa Arnot Acquisition Company (“**the Cometa Arnot Acquisition Co**”), for the purposes of the proposed transaction. The Cometa Arnot AquisitionCo together with the Arnot Affected Employees Trust, and a new trust for the benefit of the current Arnot employees not represented by the former (“**the Arnot Current Employees Trust**”), will incorporate a new holding company (“**the Arnot NewCo**”) to own 100% of the Arnot Assets. The Arnot NewCo will have leading empowerment credentials.
- 3.7.4.4 Cometa will agree a new shareholding strcuture of up to 25% in the Arnot NewCo for the Arnot Affected Employees Trust and the new Arnot Current Employees Trust. Together, they will receive a combined shareholding equivalent of up to 25% including 2 (two) representatives on the board of Arnot NewCo.
- 3.7.4.5 The Arnot NewCo has engaged Nu Gen, a management company to operate the Arnot Assets should the proposed transaction proceed. The plan is for Arnot NewCo to immediately expand underground operations into 10 Shaft as well as purchase the Eskom owned land situated at Mooifontein to access the opencast opportunities at Pit 1A and Pit 2A. The Arnot NewCo will firstly supply the Eskom Coal Supply Agreement from Pit 1A, 10 and 11 Shaft and supply coal from an Eskom approved Cometa asset within close proximity in order to supplement production during ramp-up and rectification period.

- 3.7.4.6 Cometa operates an Eskom approved asset within 50km of the Arnot Coal Mine which is currently supplying in-specification coal to the Camden Power Station. Production at the approved asset is sufficient to begin immediate rectification supply to supplement current production while 10 Shaft and pit 1A ramp up to steady-state. Cometa is ready to immediately supply coal to the Company subject to agreeing a delivery schedule and price negotiations.
- 3.7.4.7 Cometa has already engaged with prospective opencast miners which include both JCI Mining and Concor Mining Services who have provided letters of support.
- 3.7.4.8 The Arnot NewCo will continue mining the extended 11 Shaft and immediately prepare to recommission 10 Shaft for full production.
- 3.7.4.9 The proposed transaction is subject to the following suspensive conditions:
 - 3.7.4.9.1 Obtaining all applicable authorisations and regulatory approvals for the legal transfer of the Arnot Assets to Arnot NewCo;
 - 3.7.4.9.2 Obtaining Eskom's consent for the cession of the Eskom CSA to Arnot NewCo and waiver by Eskom of its rights to terminate the Eskom CSA, and to claim penalties and/or damages as a result of the historic breaches by the Company under the Eskom CSA;
 - 3.7.4.9.3 The acquisition by Arnot NewCo of portions 1, 7 and the remainder of the farm known as Mooifontein 448 including the transfer of servitudes or right of use ancillary thereto, from Eskom, and any other land or right of use thereof necessary to access the opencast areas;
 - 3.7.4.9.4 The execution of the shareholders agreement between the proposed trusts and the Cometa Arnot AcquisitionCo in respect of their shareholding in Arnot NewCo;
 - 3.7.4.9.5 Transferring the funds currently held in a trust account for rehabilitation obligations of the Company to a new trust structure with the beneficial ownership held by Arnot NewCo for the rehabilitation obligations of Arnot NewCo in respect of the Arnot Coal Mine; and
 - 3.7.4.9.6 The execution of market standard long-form agreements for transactions of this nature.
- 3.7.4.10 Cometa is exploring mechanisms to allow for payment to creditors pre-finalisation of the suspensive conditions provided that sufficient security is provided.
- 3.7.4.11 The Cometa Arnot AcquisitionCo will place up to R72 517 771.00 (seventy-two million five hundred and seventeen seven hundred and seventy-one Rand), being 25% of the purchase consideration, in an interest bearing escrow deposit account as security for the proposed transaction upon signature of the long-form agreements.
- 3.7.4.12 Cometa is prepared to negotiate a market related break fee that is payable to the Company that will be detailed in the long-form agreements.
- 3.7.4.13 In addition, Cometa will make the following investment when acquiring the Arnot Assets and will provide a working capital facility in the transition period:

- 3.7.4.13.1 Mooifontein land purchase – R50 600 000.00
- 3.7.4.13.2 Working capital injection (transition period) – R50 000 000.00
- 3.7.4.13.3 Capital expenditure planned – R201 459 461.00
- 3.7.4.14 With regard to the working capital facility, Cometa is prepared to agree a form of working capital finance for the Company in the transition period between signing of the long-form agreements and the finalisation of the suspensive conditions. Such financing can be extended by way of a working capital facility, in-specification coal sold to the Company Delivered at Place on preferential payment terms to align to Eskom payment dates, or purchasing coal on Free on Truck on preferential payment terms. Such working capital financing will be secured against the Eskom receivable. The primary option is to supply coal via the rectification order on preferential payment terms to the Company such that Cometa effectively funds the rectification supply and the Company achieves an appropriate margin.
- 3.7.4.15 In order to ensure a smooth transition following the interim period between signing of and closing of the proposed transaction, and as a condition to the working capital financing (as described above), Cometa will assume joint management control of the Company alongside the BRP in a form so as to not trigger a change of control.
- 3.7.4.16 The binding offer is not subject to any further diligence by Cometa, has received all required internal approvals and Cometa is ready to conclude the long-form agreements swiftly.
- 3.7.4.17 In order to illustrate the sequence of payments outlined above, the table below provides an illustration and estimate of the potential distribution to creditors of the Company in terms of the Plan. Creditors and other affected persons must however note that this table is no more than an illustration of the waterfall and is by no means binding on the BRP or its Advisors. Furthermore, the table assumes a transaction value, derived from the Cometa Offer, of R290 071 084.00:

Waterfall	Amount
Proceeds realised on disposal	R290 071 084
BRP remuneration and expenses (s135(3))	(R3 250 000.00)
Estimate costs of Business Rescue proceedings (s135(3))	(R5 878 414.50)
Employees post-Commencement Date Claims (s135(3)(a) and 135(1))	(R2 103 636.00)
Post Commencement Claims	(R90 166 482.92)
Employee's pre-Commencement Date Claims	(R4 139 091.00)

Unsecured or concurrent creditors (including subordinated creditors)	R184 533 459.58
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3.7.4.18 The illustration above postulates:

- a distribution in full settlement of the BRP's remuneration and expenses;
- full settlement of employee post and pre-commencement claims;
- full settlement of the post-commencement claims;

3.7.4.19 On the figures postulated on the table above, this will result in an estimated Distribution to unsecured or concurrent Creditors of **57 (fifty seven) cents** in the Rand.

3.8 It should be noted that once the Plan is adopted by the creditors as part of the s151 meeting, the BRP will then proceed to present the abovementioned offers to the creditors for creditors to consider and vote on the 4 (four) offers referred in 3.7 above.

3.9 In light of the above, we attach hereto a document with the draft resolutions which will be proposed to creditors to vote on during the meeting. Similarly, the BRP reserve the right to amend and/or supplement the resolutions document prior to the commencement of the meeting.

3.10 Also attached is a proxy form marked as **Annexure B**, which creditors can use to vote for their preferred offer prior or at the meeting. Creditors are encouraged to submit their completed and signed proxy forms by no later than Thursday, 27 July 2023 at 17h00 to ArnotOpcobr@gcs-sa.co.za.

4. **Section 143 Meeting – Approval for Further Remuneration for the BRP**

4.1 On 18 July 2023, the BRP issued a notice to all the creditors of the Company for a meeting to be held in terms of section 143(3) ('the **s143 Meeting**') of the Companies Act to consider and approve additional remuneration to the BRP.

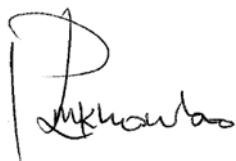
4.2 The Section 143 Meeting will be held electronically via Microsoft Teams on 28 July 2023 at 12h00 or immediately after the s151 Meeting and the meeting to consider the offers. A Microsoft Teams hyperlink providing access to the s143 Meeting was circulated by Tsakisani Machebe on 18 July 2023. Should you not have received the meeting invite and the Microsoft Teams hyperlink, kindly contact Tsakisani Machebe at tsakisani@gcs-sa.co.za before the s143 Meeting on 28 July 2023.

4.3 To date, the BRP has charged out his time at the prescribed tariff rates set out in Regulation 128 of the Companies Act. In terms of section 143(2) of the Companies Act, the BRP hereby proposes an agreement with the Company providing for further remuneration upon the adoption of the Plan as follows:

4.3.1 An increase in respect of the prescribed tariff rates as set out in Regulation 128 of the Companies Act since its promulgation in 2011 from the prescribed hourly rate of R1 740.00 (exclusive of VAT) to R4 500.00 per hour (exclusive of VAT) in respect of the BRP. This fee is payable on the Adoption Date and is based on an approximation of the BRP's standard hourly rates and the tariff rates.

- 4.3.2 The aforesaid increase will be retrospective from the commencement date, being 10 October 2022, until the substantial implementation date.
- 4.4 It should be recognised that the hourly rate prescribed by the tariff in the regulations is not market related and is outdated as it was determined in or about 2011. The current market related hourly rate is between R3 500.00 and R6 500.00 exclusive of VAT.
- 4.5 In addition to the above, the BRP will be entitled to:
- 4.5.1 a capital raising fee of 2% (two percent), exclusive of VAT of the post-commencement finance or funding in whatever form including prepayment for coal obtained in terms of section 135(2) of the Companies Act upon the successful execution of the post-commencement finance agreement; and or
- 4.5.2 to a success of 2% (two), exclusive of VAT, calculated based on the total liabilities of the Company as at Commencement Date of business rescue proceedings or a deal fee (whichever is applicable) of 2% (two percent), exclusive of VAT, in respect of any successful transaction concluded with a third party calculated based on the total liabilities of the Company as at the Commencement Date of business rescue proceedings. This fee will be payable to Mkhombo or Genesis Corporate Solutions, on the date of filing of Substantial Implementation of the adopted plan with CIPC.
- 4.6 A proxy form for or against the approval of the additional remuneration is attached marked as **Annexure C**. Creditors are encouraged to submit their completed and signed proxy forms by no later than Thursday, 27 July 2023 at 17h00 to ArnotOpcobr@gcs-sa.co.za.
5. **Closing Remarks**
- 5.1 The BRP would like to encourage creditors and other affected persons to submit their questions or comments before 28 July 2023. The BRP will attempt to respond or address all the queries before the s151 Meeting on 28 July 2023.
- 5.2 All queries regarding the business rescue proceedings of the Company may be addressed to the following email address ArnotOpcobr@gcs-sa.co.za.
- 5.3 Creditors who have not submitted their completed and signed proxy forms are requested to submit before the S151 Meeting on 28 July 2023. The proxy forms are attached for ease of reference.

Yours faithfully,



Phahlani Mkhombo
Business Rescue Practitioner
Arnot Opco Proprietary Limited (in Business Rescue)