

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

04 February 2025

Dear Sir/Madam

1.1 Reference is made to circular Twenty-five together with the Supreme Court of Appeal's judgment and order granted in (Mashwayi Projects (Pty) Ltd and Others v Wescoal (Pty) Ltd and Others (1157/2023) [2025] ZASCA) handed down on 29 January 2025 where it was held *inter alia* that:

*“39. The Act does not permit the remission of a plan back to a meeting for a new vote. It is open to the practitioner to proceed under s 153(1)(a)(i) of the Act to seek a vote of approval from the holders of voting interests to prepare and publish a revised plan. At the hearing, the practitioner and Arnot sought orders by way of a proposed draft order setting timelines to do so. **The provisions of s 153 are clear and no further directives are required (own emphasis).** The relevant time periods commence from the date of this order.*

41. *In the result, the following order is granted:*

1. *The appeals of the first, second and third appellants are upheld with costs, including the costs of two counsel;*
2. *The order of the court a quo is set aside and replaced with the following order: ‘1 The application is dismissed with costs, including the costs of two counsel;*
3. *The third respondent’s counter-application is dismissed with costs;*
4. *It is declared that the amended business rescue plan presented by the first respondent to the meeting of creditors of the second respondent, held on 28 July 2023, was not supported by the holders of more than 75% of creditors’ voting interests at the meeting as required by section 152(2) of the Companies Act 71 of 2008 (the Act) and was accordingly rejected in terms of section 152(3)(a) of the Act;*



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5. *The first and second applicants and the third respondent are directed to pay the costs of the first and second respondents' counter application, jointly and severally, the one paying, the other to be absolved, including the costs of two counsel.*
6. *The first and second applicants and the third respondent are directed to pay the costs of the fourth respondent's counter-application, jointly and severally, the one paying, the other to be absolved, including the costs of two counsel."*
7. *paying, the other to be absolved, including the costs of two counsel."*

1.2 Further to the above, the SCA held that the amended business rescue plan (the “**Plan**”) presented by the business rescue practitioner (the “**BRP**”) to the meeting of creditors of the Company, held on 28 July 2023, was not supported by the holders of more than 75% of the creditors voting interest as required by section 152(2) of the Companies Act 71 2008 (the “**Act**”) and was accordingly rejected. The SCA further outlined that the Act does not permit the remission of a Plan to a meeting for a new vote, but rather, referred the BRP to s153(1)(a)(i) of the Act.

1.3 Section 153(1)(a) of the Act provides:

“*...If a business rescue plan has been rejected as contemplated in section 152 (3) (a) or (c)(ii) (bb), the practitioner may-*

(i) Seek a vote of approval from the holders of voting interests to prepare and publish a revised plan....”

1.4 Section 153 (3) of the Act provides:

“*If, on the request of the BRP in terms of subsection (1) (a)(i)...-*

(a) The practitioner must –

(i) Conclude the meeting after that vote; and

(ii) Prepare and publish a new or revised business rescue plan within 10 business days; and

(b) the provisions of this Part apply afresh to the publishing and consideration of that new or revised plan.”.

1.5 In light of the SCA’s judgment and order read with the provisions of s153 of the Act, the BRP must therefore seek a vote of approval from the holders of voting interests to prepare and publish



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a new or revised business rescue plan and thereafter reconvene a meeting of creditors in terms of section 151 of the Act to consider and vote on a new or revised business rescue plan.

- 1.6 Creditors are therefore requested to vote on this motion by completing and signing the attached **Annexure A**.
- 1.7 The completed and signed **Annexure A** must be returned to this email address (ArnotOpcobr@qcs-sa.co.za) by no later than Friday, 07 February 2025 at 13h00.
- 1.8 Should the majority of creditors vote in favour of the motion above, the BRP must publish a new or revised Plan within 10 business days, or such time as may be allowed by the court or holders of a majority of the creditors voting interest.

2. Conclusion

Creditors and other affected persons of the Company may direct their queries in relation to this circular to: ArnotOpcobr@qcs-sa.co.za but are also reminded that all relevant notices and documents (including the Applications) are available online at this link: <https://arnot-opco.com/business-resscue/>.

Yours faithfully,

Phahlani Mkhombo N.O.
Business Rescue Practitioner
Arnot Opcop Proprietary Limited (in Business Rescue)



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