# *MODUS OPERANDI and* COMMON PURPOSE

The suspects, Adriano Donadon, Peter Guiducci and Enrico Alicandri are all executives with an Italian Company, known as CMC di Ravenna. The various acts of fraud were part and parcel of an ongoing criminal enterprise, committed by the suspects with a common purpose. The common purpose was to defraud Transnet, and therefore defraud the tax-payer, by setting themselves up as part of a commission conduit by unlawfully winning a tender, so that monies could flow to Philane Mavundla, and thence on to others.

The contract is to carry out civil engineering works at Durban Port

The value of the Fraud is approximately R4,000,000,000-00 **FOUR BILLION RAND**

On **21 August 2017**, Mr Adriano Donadon unlawfully and intentionally misrepresented to Transnet, material facts pertaining to the 'CMI Emtateni Joint Venture' in order to be awarded a **R4 billion** contract. Had Donadon not misrepresented the material facts, the Joint Venture would not be fit to be awarded the tender.

On **17 October 2018**, Mr Peter Guiducci, unlawfully and intentionally misrepresented under oath in a sworn affidavit that CMC di Ravenna had contracted for 100% of R4 billion tender as opposed to their actual 1% thereof. Guiducci later in his affidavit goes on to contradict himself by stating CMC di Ravenna had 35% in the tender as opposed to their 1%. Clearly both the 100% claim and the 35% claim are lies, as CMC di Ravenna had **ONLY** 1% of the contract.

On **22 October 2018**, Mr Enrico Alicandri the 'authorised representative' for CMC di Ravenna gave an affidavit which formed an application for Business Rescue in South Africa. Mr Alicandri committed a serious offence of fraud, in that he unlawfully and intentionally concealed the fact that the Transnet contract/tender had been suspended at the time of his affidavit, for the purpose of stabilising their cash flow, thereby committing the offence of Fraud against its creditors.

It is clear that suspects acted in concert with each other and with a common purpose as part of a criminal enterprise, as defined in the Prevention of Organised Crime Act.

The docket should go to SCCU for further investigation

SAPS SAPD 3M(a)

Part Deel A 1

**SOUTH AFRICAN POLICE SERVICE** — **SUID-AFRIKAANSE POLISIEDIENS**

# PREAMBLE TO STATEMENT * AANHEF TOT VERKLARING

Station / Stasie: BEDFORDVIEW

CAS no / MAS no: 286 / 01 / 2019

## PERSONAL PARTICULARS * PERSOONLIKE BESONDERHEDE

Title / Titel: MR

Initials / Voorletters: P

Surname / Van: O'SULLIVAN

First names / Voorname:

Identity number / Identiteitsnommer: [redacted]

Race / Ras: A / A; Br / Br; Bl / Sw; W / W

Passport number / Paspoortnommer:

Country of issue / Land van uitreiking:

Date of Birth / Geboortedatum: 19550826

Age / Ouderdom: [redacted]

Gender / Geslag: M / M; F / V

Nationality / Nasionaliteit: RSA

Citizenship / Burgerskap: RSA

I am/am not a member of the SAPS with PERSAL no * Ek is lid/nie lid van die SAPD met PERSAL no

## RESIDENTIAL ADDRESS * WOONADRES

Street name / Straatnaam: [redacted]

Building/farm/plot/place / Gebou/plaas/plot/plek:

Suburb/Extension/Area / Voorstad/Uitbreiding/Gebied: SANDOWN

Town/City / Dorp/Stad: JOHANNESBURG

Postal Code / Poskode: 2146

Telephone number / Telefoonnommer: Home / Huis Code / No; Work / Werk Code / No

Cellphone number / Sellulêre foonnommer: 082 [redacted]

Fax / Faks Code / No

## ADDRESS--WORK/BUSINESS/INSTITUTION/ORGANISATION *ADRES--WERK/BESIGHEID/INSTANSIE/ORGANISASIE

Name of Institution/Organisation / Naam van Instansie/Organisasie:

Street name / Straatnaam: AS ABOVE

Building/farm/plot/place / Gebou/plaas/plot/plek:

Suburb/Extension/Area / Voorstad/Uitbreiding/Gebied:

Town/City / Dorp/Stad:

Postal Code / Poskode:

Telephone number / Telefoonnommer: Home / Huis Code / No; Work / Werk Code / No

Cellphone number / Sellulêre foonnommer:

Fax / Faks Code / No

Would you like to receive information regarding this case via sms? / Wil u inligting in verband met die saak ontvang per sms? Yes / Ja ~~No / Nee~~

## CONTACT PERSON (IF APPLICABLE) * KONTAK PERSOON (INDIEN VAN TOEPASSING)

Title / Title:

Initials / Voorletters:

Surname / Van:

Telephone number / Telefoonnommer: Home / Huis Code / No; Work / Werk Code / No

2019-01-25

Date/Datum

Signature/Handtekening

SOUTH AFRICAN POLICE SERVICE — SUID-AFRIKAANSE POLISIEDIENS

SAPS / SAPD 3M(b)

Part / Deel A 1

## STATEMENT * VERKLARING

Station / Stasie: BEDFORDVIEW

CAS no / MAS no: [illegible] 286 . 01 . 2019

The following particulars in respect of the offence / incident is supplied:
Die volgende gegewens met betrekking tot die misdryf / voorval word verstrek:

### PARTICULARS OF OFFENCE/INCIDENT * BESONDERHEDE VAN MISDRYF/VOORVAL

Date and time of offence/incident / Datum en tyd van misdryf/voorval: 20170821 HHMM 1200

Or / Of Period: Between / Tydperk: Tussen: HHMM ____ on / op 20181022 and / en HHMM 1200 on / op ________

Day of week / Dag van week: Su/So M/M D/D W/W D/D V/V S/S

Description of Offence/Incident / Beskrywing van Misdryf/Voorval: FRAUD

Method used/Entrance gained / Metode gebruik/Toegang verkry: MISREPRESENTATION IN WRITING

Type of instrument used / Tipe instrument gebruik: SWORD STATEMENTS, LETTERS

### SCENE OF CRIME * TONEEL VAN MISDAAD

Between: Name of place / Tussen: Pleknaam:

and: Name of place / en: Pleknaam: EDH BUSINESS PARK – 2ND FLOOR BLOCK 'A'

Or / Of

Street name / Straatnaam:

Building/farm/plot/place / Gebou/plaas/plot/plek: 05 OSBORNE LANE

Suburb/Extension/Area / Voorstad/Uitbreiding/Gebied:

Town/City / Dorp/Stad: BEDFORDVIEW

Postal Code / Poskode:

Geographical block no / Geografiese blok no:

Type of premises / Tipe perseel: BUSINESS

2019-01-25
Date/Datum

Signature/Handtekening

In a case of theft of a vehicle the statement must be continued on form SAPS 3M(c).
In a case of theft of a firearm the statement must be continued on form SAPS 3M(c).
In all other cases the statement must be continued on blank folio paper

In die geval van diefstal van 'n motorvoertuig moet die verklaring op vorm SAPD 3M(c) voortgesit word.
In die geval van diefstal van 'n vuurwapen moet die verklaring op vorm SAPD 3M(d) voortgesit word.
In alle ander sake moet die verklaring op 'n blanko foliopapier voortgesit word.

Revision 1.0 Dated 2006-10-24

## SWORN STATEMENT

I, the undersigned Paul O'Sullivan, ID No. [redacted] state under oath as follows:

1

I am an adult male Certified Fraud Examiner and the Founding Director of Forensics for Justice, a non-profit organisation that has identified corruption in certain public administrative bodies, in particular the criminal justice system and/or large State Owned Companies ***'S.O.C's'***, with business address at [redacted] Sandown Estate, Strathavon, Sandton, with cell phone no. 082 [redacted].

2

Forensics for Justice is a registered not for profit organisation with **NPC No. 2015/25962/08**, carrying out public interest work for the betterment of the people of South Africa. Our main focus is to expose corruption (see www.forensicsforjustice.org)

3

The purpose of this statement is to set out allegations of Fraud against certain executives of CMC di Ravenna, and to call for a police investigation, namely:-

2.1 **Adriano Donadon**, CMI Emtateni JV board member (South Africa)

2.2 **Peter Guiducci**, Chief Finance Officer of CMC di Ravenna (South Africa)

2.3 **Enrico Alicandri**, Chairman of the CMI Emtateni JV board (South Africa)

**BACKGROUND**

4

A Joint Venture, CMI Emtateni JV ***'the JV'***, comprising of the following entities:

1% CMC di Ravenna (a foreign Italian company)

69% CMI Infrastructures (Pty) Ltd,

15% Omame Empowerment Consortium

15% Masinya Empowerment Consortium

submitted a tender to Transnet, which they later won (contract worth R4.2 Billion), for *"The Reconstruction, Deepening and Lengthening of the Durban Container Terminal berths 203 to 205"*, Tender bid no. 2122830-0618.

ST

5

The 51% shareholder of the 69% JV member, CMI Infrastructures (Pty) Ltd, is Mr Philane Godfrey Mavundla with ID No. 6707[redacted]. Mavundla was the prior sole director of PG Mavundla Engineering (Pty) Limited, which collapsed in 2016 due to financial mismanagement and tax fraud.

## FIRST EVIDENCE OF FRAUD

**ADRIANO DONADON'S LETTER DATED 21 AUGUST 2017** (Annexure 'POS-1')

6

The JV tender was submitted to Transnet under a cover letter signed by Donadon, dated **21 August 2017**. A copy of this letter is attached as **Annexure 'POS-01'**. This cover letter amounts to the unlawful and intentional misrepresentation of material facts for the purpose of unlawfully being awarded a R4.2billion tender, the misrepresentation intended to conceal:

6.1 That the originally intended bidder (namely PG Mavundla Engineering (Pty) Ltd), had been placed in Business Rescue following SARS judgments amounting to R52m. This resulted in the individuals concerned, hastily forming CMI Infrastructures (Pty) Limited, in the week after the collapse of PG Mavundla Engineering (Pty) Limited. This was also eight weeks before the tender closing date. A bank account for the 69% shareholder was opened only four days before the tender closing date. The tender closing date was 2017-08-22.

7

The historical joint ventures with Mavundla and CMC di Ravenna included **ONLY** the following common companies:

7.1 CMC di Ravenna (now in Business Rescue)

7.2 PG Mavundla Engineering (Pty) Limited (now in Business Rescue)

8

The above companies were awarded the following publicly funded contracts, through 'joint ventures' which were beset with serious problems and delays from start to finish:

8.1 Eskom Ingula (ZAR16BN) **Fraud and corruption involving Billions has been alleged**, which is under investigation by S.I.U.

8.2 Eastern Basin Acid Mine Drainage Project (ZAR1BN) **Fraud and corruption has been alleged**

8.3 John Ross Highway (ZAR250 million) **Two lanes of the highway collapsed in the week the Transnet tender was submitted by CMC di Ravenna**

9

In Adriano Donadon's letter, dated **21 August 2017**, where he falsely stated:

> ***"CMI Infrastructures (Pty) limited started as an unincorporated joint venture between CMC di Ravenna ("CMC") and PG Mavundla Engineering (Pty) Limited ......"***

This confirms that the three prior infrastructure contracts involved PG Mavundla Engineering (Pty) Limited and NOT CMI Infrastructures (Pty) Ltd.

10

Continuing further with Donadon's letter of 21 August 2017, Donadon fraudulently states the following:

> ***"CMI Infrastructures (Pty) Ltd a local 51% black owned company, which has delivered few infrastructure projects in South Africa, such as:***
>
> - ***The R16 Billion Ingula Pumped Storage Scheme in Ladysmith;***
> - ***The John Ross Highway project in Richards Bay;***
> - ***The Eastern Basin Acid Mine Drainage Project in Springs."***

11

ST

I submit that the above statement was an intentional fraud against Transnet for the following reasons:

11.1 CMI Infrastructures had only been formed two months earlier (a week after PG Mavundla Engineering (Pty) Limited had been placed in Business Rescue with massive debts, comprising tax-fraud amongst others). Accordingly CMI Infrastructures had NEVER delivered any infrastructure projects, or indeed any work anywhere on the planet. This is therefore a total fraud. As proof of the Business Rescue of involved PG Mavundla Engineering (Pty) Limited, I submit a copy of an affidavit dated 2017-06-13, signed by Mr Mavundla as **Annexure 'POS-2'.**

11.2 The company CMI Infrastructures (Pty) Limited had NEVER traded and its bank account had only been opened three days earlier. I submit as evidence a TransUnion report as **Annexure 'POS-3'.**

11.3 The (by then insolvent) Mr Mavundla, his insolvent company PG Mavundla Engineering (Pty) Limited and the cash-strapped CMC di Ravenna all wanted to use the reputation of the now insolvent companies, without being liable for the massive debts they had racked up.

11.4 Not a single one of the shareholders in CMI Infrastructures (Pty) Limited, were ever a shareholder in any of the three named Joint Ventures, fraudulently used as references to Transnet. The only link was shareholders of shareholders, namely Mavundla.

11.5 Therefore, the representation of Donadon was a bare-faced lie, intended to induce Transnet into believing that the Joint Venture had delivered previous large-scale infrastructure projects. It seems the misrepresentation must have worked, as Transnet did award a R4Billion tender to them.

ST

## SECOND EVIDENCE OF FRAUD

**PETER GUIDUCCI'S AFFIDAVIT DATED 17 OCTOBER 2018** (Annexure 'POS-4')

12

Chief Finance Officer of CMC di Ravenna, dated **2018-10-17** in Johannesburg High Court Case: Botjheng Water (Pty) Limited v CMC Ravenna[1]. In that sworn statement, Guiducci made the following averments under oath and CMC di Ravenna are therefore estopped from claiming anything to the contrary:

12.1

**Paragraph 21:**

Guiducci claims the company is in good financial standing. Clearly Guiducci knew that statement to be fraud, as CMC di Ravenna had already defaulted on many debts, not only the subject matter of the liquidation application in South Africa. They had also defaulted on debts in Italy and elsewhere, running into Billions of Rand. Clearly therefore Guiducci knew, when he signed the affidavit, that he was lying.

12.2

**Paragraph 61 and 61.2**

Guiducci claimed the full value of the Transnet project at EUR255 million (ZAR4 billion) for the benefit of CMC di Ravenna. This amounts to *prima facie* evidence that the existence of the other members of the joint venture amounted to B-BBEE window dressing.

12.3

See further **Annexure 'D'** to Guiducci's sworn affidavit:

> ***"This report was prepared by the board of directors ....."***

12.4

Second bullet point under "***International***" where it states:

> ***"South Africa – port of Durban reconstruction***
> ***The total value of the contract is approximately EUR 255 million (100% CMC)"***

12.4.1

[1] In the High Court of South Africa Gauteng Local Division, Johannesburg, Case no. 34120/2018

ST

We further NOTE that Guiducci claimed that CMC di Ravenna, had a substantial project at Gdansk Port, in Poland, value EUR92m. This CMC di Ravenna contract had already been cancelled by the time of Guiducci's affidavit, amounting to a further fraud. In this regard we refer to the desktop research utilising Google Translate carried out by Forensics for Justice:

https://translate.google.com/translate?hl=en&sl=pl&u=http://www.przetargi.egospodarka.pl/wyroki-kio/2018/orzeczenie,0929.html&prev=search

**Committee composed of:**
0: Chair: Luiza Łamejko. Members: Anna Kuszel - Kowalczyk , Jan Kuzawinski. Protokolant: Zuzanna Idźkowska

after being heard at the hearing on May 25 and June 6, 2018
r. in Warsaw appeals
brought to the President of the National Chamber of Appeal on May 7, 2018 by **contractors jointly applying for the award of the contract: PORR SA, CYES MARITIME WORKS SL, ROVERPOL Sp. z oo, ul . Hołubcowa 123, 02-854 Warsaw**
in proceedings conducted by the **Director of the Maritime Office in Gdynia, ul. Chrzanowskiego 10, 81-338 Gdynia**
with the participation **of Cooperativa Muratori & Cementisti-CMC di Ravenna Società Cooperativa, Via Trieste 76, 48122 Ravenna , Italy** declaring to join
appeal proceedings on the part of the ordering party rules:

1.
**takes into account the appeal and orders the contracting Director of the Maritime Office in Gdynia annulment of the testing and evaluation of offers in Parts 1 and 2 conduct, re-examine and evaluate offers in Parts 1 and 2 proceedings, including the exclusion of Cooperativa Muratori & Cementisti- CMC di Ravenna Società Cooperativa from the proceedings pursuant to art. 24 sec. 1 points 12, 16 and 17 of the Public Procurement Law and rejection of the offer made by the contractor Cooperativa Muratori & Cementisti-CMC di Ravenna Società Cooperativa on based on art. 89 paragraph 1 point 2 of the Public Procurement Law and art. 89 paragraph 1 point 4 in conjunction from art. 90 sec. 3 Public Procurement Law**
2.
the costs of proceedings are charged to the **Director of the Maritime Office in Gdynia, ul. Chrzanowskiego 10, 81-338 Gdynia** and:
2.1. counts **20,000 zlotys of PLN** 0,000 against costs of appeal proceedings (say: twenty thousand zlotys zero grosz) paid by **contractors jointly applying for the**

57

**contract: PORR SA, CYES MARITIME WORKS SL, ROVERPOL Sp. z o. o**
**, ul. Hołubcowa 123, 02-854 Warsaw** with the title entry from the appeal,
2.2. he awards the **Director of the Maritime Office in Gdynia, ul. Chrzanowskiego 10, 81-338 Gdynia** for the benefit of **contractors jointly applying for a grant orders: PORR SA, CYES MARITIME WORKS SL, ROVERPOL Sp. z oo, ul. Hołubcowa 123, 02-854 Warsaw, the** amount of PLN **23 600 PLN 00** (in words: twenty-three thousands of six hundred zlotys and zero) incurred as an entry from the appeal, and lawyer's remuneration.

Pursuant to art. 198a and 198b of the Act of January 29, 2004 -
The law of orders public (Journal of Laws of 2017, item 1579, as amended) on this judgment - within 7 days from its delivery - a complaint may be filed through the President of the National Chamber of Appeal down
District Court in Gdańsk.

**Chairman : ..................................**

**Ref. file: KIO 929/18**

12.4.2

Further desktop research by Forensics for Justice revealed that the Gdansk contract was cancelled BEFORE commencement of the works due to **CMC di Ravenna committing fraud in their tender submission**. The logical conclusion to be drawn is that CMC di Ravenna have resorted to transnational fraud to bolster their rapidly dwindling finances.

12.5

Further at the foot of the page of Annexure 'D' where it states

> ***"... as at June 30, 2018"***

I pause to mention this is one week before CMC were advised by Krishna Reddy (of Transnet) that they were the 'preferred bidder' on a tender where they legally held only 1% of the contract.

12.6

Apart from the sworn statement of Guiducci, there is the research of Forensics for Justice, which was provided to Transnet on 22 November 2018:

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The below is the proof that CMC di Ravenna were fully aware, BEFORE the tender award was formalised. They used a rate of 16:1, which means they price there share at ZAR4.08 Bn

https://www.researchpool.com/provider/spread-research/cmc-di-ravenna-1q18-strong-order-intake-but-ebitda-boosted-by-except

**CMC di Ravenna 1Q18 - Strong order intake but EBITDA boosted by exceptional items**

CMC di Ravenna (CMC), the Italian construction company, experienced a very strong 1Q18 in terms of order intake, with €1.1bn gained during the quarter resulting in the total backlog reaching €4.6bn compared to €3.7bn at YE17. The main awards were a €275m urbanization project in Kuwait, a €255m port of Durban reconstruction in South Africa, and the €153m high speed railway in Italy.

**07/06/2018**

12.7

What is significant about all of the above, is the following:

12.7.1 Transnet's Mr Krishna Reddy issued a letter on 2018-07-06, to Porcelli of CMC di Ravenna, that merely stated that they (the 'they' being the Joint Venture – NOT CMC di Ravenna) were the 'preferred bidder'. The letter was still subject to contract.

12.7.2 Mr Paolo Porcelli (General Manager of CMC di Ravenna), obviously already knew that CMC di Ravenna would be performing ALL of the contract (not the 1% in their tender document), and he also knew that CMC di Ravenna were in financial trouble, so he caused 'Researchpool' to issue a statement as above, which would act as 'comfort' to the multi-billion Rand global creditors of CMC di Ravenna, who by then were already getting anxious.

12.7.3 Indeed Research-Pool had previously issued a clear liquidity warning on CMC di Ravenna in 2016, long before the Transnet Tender invitation was even published:

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> https://www.researchpool.com/provider/spread-research/cmc-di-ravenna-cmcrav-cmc-di-ravenna-2q16-results
>
> **CMC DI RAVENNA - 2Q16 RESULTS**
>
> We found the 2Q16 results released by Cmc di Ravenna, Italy's 5th-largest construction firm, encouraging although long term issues (geographical mix, liquidity) remain. 2Q16 was essentially a quarter of transition as previously delivered contracts were not yet replaced by recently won projects, expected to ramp up from 3Q. Revenue therefore tumbled by 31% yoy to €225m. In Italy (44% of sales), signs of recovery are scarce amid public authorities' efforts to rein in deficits. Meanwhile, activity in Africa (35% of sales) took a hit from the recent low order intake driven by sliding commodity prices...

12.7.4 As I previously mentioned, it is common cause that CMC di Ravenna, were LEGALLY only a 1% stakeholder of the Transnet project Joint Venture. In this regard I wish to refer to **Annexure 'POS-5'**, which is an organisation chart I have created showing precisely how the Joint Venture is made up. The red font is merely there to show those of the syndicate that have been engaged in tax fraud in the past, or have simply failed or refused to pay their taxes.

## THIRD EVIDENCE OF FRAUD

### ENRICO ALICANDRI'S SWORN AFFIDAVIT DATED 22 DECEMBER 2018 (Annexure 'POS-6')

13

I refer to the sworn affidavit of CMC di Ravenna 'authorised representative' Enrico Alicandri, dated **2018-12-22**, which formed an application for **Business Rescue** in South Africa and was field with CIPC on 2019-01-02.

14

Apart from again confirming that CMC di Ravenna claim an amount of EUR255 million (equivalent of ZAR 4 Billion) from the Durban Port contract, which was an outright lie), Mr Alicandri commits a serious offence of FRAUD, in that he unlawfully conceals the fact that the Transnet contract had been suspended at the time of his affidavit, which obviously has to impact on cash flow.

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## *MODUS OPERANDI and* COMMON PURPOSE

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It is clear to me, and this is what I will now allege, is that the conduct I have alluded to above, were not isolated fraudulent events, individually committed by each of the suspects, Adriano Donadon, Peter Guiducci and Enrico Alicandri. The various acts of fraud were part and parcel of an ongoing criminal enterprise, committed by various members of the criminal enterprise, with a common purpose. The common purpose was to defraud Transnet, and therefore defraud the tax-payer, by setting themselves up as part of a commission conduit by unlawfully winning a tender, so that monies could flow to Philane Mavundla, and thence on to others.

15.1

On **21 August 2017**, Mr Adriano Donadon unlawfully and intentionally misrepresented to Transnet, material facts pertaining to the CMI Emtateni Joint Venture in order to be awarded a **R4 billion** contract. Had Donadon not misrepresented the material facts, the Joint Venture would not be fit to be awarded the tender.

15.2

On **17 October 2018**, Mr Peter Guiducci, unlawfully and intentionally misrepresented under oath in a sworn affidavit that CMC di Ravenna had contracted for 100% of R4 billion tender as opposed to their actual 1% thereof. Guiducci later in his affidavit goes on to contradict himself by stating CMC di Ravenna had 35% in the tender as opposed to their 1%. Clearly both the 100% claim and the 35% claim are lies, as CMC di Ravenna had **ONLY** 1% of the contract.

15.3

On **22 October 2018**, Mr Enrico Alicandri the 'authorised representative' for CMC di Ravenna gave an affidavit which formed an application for Business Rescue in South Africa. Mr Alicandri committed a serious offence of fraud, in that he unlawfully and intentionally concealed the fact that the Transnet contract/tender had been suspended at the time of his affidavit, for the purpose of stabilising their cash flow, thereby committing the offence of Fraud against its creditors.

16

I hereby request the South African Police Service to investigate the allegations of FRAUD against Adriano Donadon, Peter Guiducci and Enrico Alicandri. FURTHERMORE, and in view if the fact that these people are all Foreign Nationals, I request that the State seize their passports, so that they may not flee the country.

17

Prior to me signing this statement, I have carefully read through it and am satisfied that the facts are correctly and accurately recorded. The following questions were put to me in person by the commissioner of oaths and I entered the answers thereto in my own handwriting:

*'Do you know and understand the contents of this statement?'* Yes

*'Do you have any objection to taking the prescribed oath?'* No

*'Do you consider the prescribed oath binding on your conscience?'* Yes

**Paul O'Sullivan**

I certify that the deponent has acknowledged that he knows and understands the contents of this statement which was sworn to before me and the deponent's signature was placed thereon in my presence at **JOHANNESBURG** on this **TWENTY FIFTH** day of **JANUARY 2019.**

Commissioner of Oaths

**Sarah-Jane Trent**
COMMISSIONER OF OATHS (EX-OFFICIO)
Attorney
[redacted] Sandown Estate
Johannesburg, Republic of South Africa

**CMI EMTATENI JOINT VENTURE**

Block A, 2nd Floor, EOH Business Park,

No.5 Osborne Lane, Bedfordview

Tel: +27 11 616 0910

Fax: +27 11 616 0815

Email: tendersafrica@cmcra.com

ANNEXURE "PDS-1"

21st August 2017

TRANSNET SOC Pty Ltd
Queens Warehouse,
237 Mahatma Gandhi Road,
Durban
South Africa

Dear Sir/ Madam

**Subject: RFQ Number 2122830-618 for the Durban Container Terminal Berths 203/205 Reconstruction, Deepening and Lengthening.**

**Covering Letter**

We would like to take this opportunity to thank your organisation for affording us to submit this proposal in respect of the above-mentioned RFQ.
In preparing our Bid we have undertaken a detailed study and analysis of the Tender Document and are certain that our Bid meets and exceeds all the requirements, including but not limited to, the technical, environmental, financing, broad based empowerment, supplier development and rural integration perspective requirements.

With a clear understanding of the above we have decided to constitute a Joint Venture under the name of **CMI EMTATENI JOINT VENTURE** led by CMC di Ravenna.

The composition of the Joint Venture is made of four entities, as follows:

- CMC Di Ravenna – an Italian company based in South Africa, with several ongoing project in South Africa and in the Sub-Saharan Region (see brief profile attached)
- Omame Emtateni Empowerment Group Consortium- group formed by a combination of five local black women owned companies, who have been working as a collective but independently owned companies for the last fifteen years (see brief profile attached)
- Masinya Emtateni Empowerment Group Consortium- group formed by a combination of five local black owned companies; the companies forming this group have also been working together for over fifteen years. (see brief profile attached)
- CMI Infrastructure (Pty) Ltd a local 51% black owned company, which has delivered few infrastructural projects in South Africa, such as:



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- The R16 billion Ingula Pumped Storage Scheme in Ladysmith;
- The John Ross Highway Project in Richards Bay;
- The Eastern Basin Acid Mine Drainage Project in Springs.

CMI Infrastructure (Pty) Ltd ("CMI") started as an unincorporated Joint Venture between CMC di Ravenna ("CMC") and PG Mavundla Engineering (Pty) Ltd but in appreciation of and in order to give continued long-term effect to the spirit, purpose and import of the BB-BEE legislative goals, recently formalize the cooperation between the Parties by incorporating a Company in South Africa. This has enabled the Parties to broaden their BB-BEE credentials by adding an additional Black Shareholding entity i.e Ngwenyama Lion Trust.

CMI EMTATENI JOINT VENTURE is pleased to tender a firm black broad based empowerment initiative that has 58% black shareholding and 38% black female shareholding resulting in an impressive 95.38 BEE Score and archiving a level 2 Black Economic Status.
Our Bid not only pays attention to the technical aspects as set out in detail in our approach paper but ensures that special focus is placed on the Supply Development Plan where we intend developing few entities that will operate beyond this project. To mention two we will be developing a ready mix concrete company and we will be establishing a new black owned quarry if we will be awarded the project.

The Rural Integration as a separate project that has to deliver the results and sustain itself beyond the project life span has been given all the attention it deserves. We have engaged INK Foundation to conduct a study of what needed to be done on site.
They have undertaken several visits and met with local leadership at traditional and municipality level and the outcome of these visits has been well articulated in their proposal that is being submitted as part of our bid.

In addition, CMI EMTATENI JOINT VENTURE through CMC di Ravenna is also in a position to mobilize competitive funding for major infrastructure projects, with reputable commercial and development financing institutions.
CMC di Ravenna can assist through its own company Concrete Finance and the support of the Italian Export Credit Agency - SACE, with competitive funding solutions.
SACE offers export credit, credit assurance, foreign investment protection services, financial guarantees and sureties, with operations worth €70 billion assured in 189 countries and supports the competitiveness of Italian and foreign businesses.
CMC di Ravenna has already successfully collaborated with SACE in Africa, funding the Ingula Pumped Storage Project in South Africa, the Soyo Road Project in Angola and the Itare Dam Project in Kenya.

We are also pleased to attach herewith a Letter of Interest from SACE and should the Employer be interested we will be glad to provide more details for funding options and the term sheets.



5

We believe that our team has the necessary capabilities and resources to respond to the demanding execution of this important project and we look forward to a positive outcome.

We trust that we have interpreted your instructions correctly and remain available for further clarifications.

Yours faithfully,

Adriano Donadon
Authorised Signatory
On behalf of CMI EMTATENI JOINT VENTURE



5T

ANNEXURE "POS-2"

# Companies and Intellectual Property Commission
# Republic of South Africa

## Form CoR 123.1

### About this Form

- This form is issued in terms of section 129 and 131 of the Companies Act, 2008, and Regulation 123 of the Companies Regulations, 2011.
- A company resolution to committee business rescue proceedings has no force or effect until it has been filed with this notice.
- This notice must be published to every affected person within 5 business days after -
  (a) It has been filed, in the case of a resolution; or
  (b) The date of the court order, in such a case.
- If this Notice is issued following a board resolution-
  (a) The company must appoint a business rescue practitioner with 5 business days after filing this notice : and
  (b) Any affected person may apply to a court in terms of section 130 for an order setting aside the resolution.
- The fee for filing this notice is R0.

### Contacting the Commission

The Companies and Intellectual Property Commission of South Africa

**Postal Address**
PO Box 429
Pretoria
0001
Republic of South Africa
Tel: 086 100 2472

www.cipc.co.za

## Notice of Beginning of Business Rescue Proceedings

**Date:** 13 June 2017

**Customer Code:** SUJAY1

**Concerning**

*(Name and Registration Number of Company)*

*Name:* PG MAVUNDLA ENGINEERING (PTY) LTD

*Registration No:* 1997/020620/07

The above named company advises that business rescue proceedings have commenced in terms of Chapter 6 of the Companies Act, as a result of:

[X] The Board of the company having adopted the attached resolution in terms section 129, on 13 JUNE 2017.

[ ] A Court having made the attached order in terms of section 131, on ______.

In terms of section 132 (1)(a), the company's business rescue proceedings commenced on 13 JUNE 2017, being the date on which:

[X] This notice was filed with the Commission.

[ ] The court issued the attached order.

*(Only in the case of a company resolution)*

In support of this Notice, the company has attached a sworn statement of the relevant facts upon which the resolution was founded by a director representing the Board.

SOUTH AFRICAN POLICE SERVICE
CSC
2017 -06- 13
GREYTOWN
KWAZULU-NATAL

**Name and Title of person signing on behalf of the Company:**

MAVUNDLA PHILANI GODFREY DIRECTOR

**Authorised Signature:**

This form is prescribed by the Minister of Trade and Industry in terms of section 223 of the Companies Act, 2008 (Act No. 71 of 2008).

SOUTH AFRICAN POLICE SERVICE
CSC
2017 -06- 13
GREYTOWN
KWAZULU-NATAL

## SWORN STATEMENT

I, the undersigned

PHILANI GODFREY MAVUNDLA ID no. 6707285365080

Do hereby declare under oath as follows:

### INTRODUCTION

1. I make this Affidavit in terms of Section 129 of the companies Act 71 of 2008, as amended from time to time (hereinafter referred to as the Act) on behalf oF the entity, which is PG MAVUNDLA ENGINEERING (PTY) LTD).

2. I am an adult male and the authorised individual pursuant to the resolution of the directors of the entity and I am the duly authorised representative.

3. The facts contained in this affidavit falls within my personal knowledge and I confirm the contents hereof to be true and correct.

4. I am accordingly duly authorised to depose to the Affidavit on behalf of PG MAVUNDLA ENGINEERING (PTY) LTD , Registration no. 1997/020620/07 (the entity) having its registered office at. 125 VOORTREKKER STREET, GREYTOWN, KWAZULU NATAL,3250, where all our business activities take place

### RESOLUTION TO COMMENCE WITH BUSINESS RESCUE

5. On the 13TH of JUNE 2017, the board of the entity passed a resolution in terms of Section 129 of the Act to commence with business rescue proceedings and immediately thereafter place the entity under supervision of a business rescue practitioner.

6. This Affidavit deals with the relevant facts upon which the resolution of the board is founded.

### FINANCIAL DISTRESS

7. The directors of the entity reasonably believes that the entity is in financial distress, due to the fact that it is unlikely that it will be able to pay up all of its debt as they fall due and payable within the immediately ensuing six (6) months. The reasons for financial distress are attributed to the following reasons.

8. Slow payment of debtors and in some cases non payment by debtors, resulting in the entity falling behind with its monthly obligations

9. The non renewal of contracts and the slowdown in the economy, resulting in reduced income.

10. Fierce competition in the construction industry, where we have to reduce our prices to be competitive in our field.

11. Absorbitant legal costs being incurred to stay in business.

12. The company is currently dealing with arrears to its creditors, viz. CMJV (JV PARTNER), THEKWENI REINFORCING (PTY) LTD, POWERSTAR, UMVOTI TYRES, UMVOTI FUEL,PG MAVUNDLA PROPERTIES (PTY)LTD, LUNGZA MANAGEMENT AND CONSULTING, AHEERS BUILDING SUPPLIES,LIEB'S WORKSHOP CC, MANTOMBANE ENTERPRISES , PILOSIO SA , GARACH AND GARACH, NGUBANE AND COMPANY and SARS.

13. The company is currently dealing with two cases in court , both applications being brought by Powerstar and Thekweni Reinforcing. The company is also dealing with two letters of demand from Lieb's Workshop cc and SARS. There is no liquidation applications pending to the best of my knowledge.

14. Fewer new business being brought in as a result of competition in the market has contributed to this financial distress.

15. The value of the company's assets including the value of goodwill exceeds its liabilities

16. Accordingly, the directors have resolved for the current protection afforded by Chapter 6 of the Companies Act, 2008. This shall cause to prevent, under the guidance of the appointed practitioner, any affected party/creditor from hampering the ongoing business of the company ,cause a forum for negotiation and restructure of the debt, thereby improving and managing the cash flow. The practitioner will in addition, have the relevant legislative mechanisms to enforce repayments together with certain other ancillary relief, as set out in sections 140 and 141 of the Act.

**REASONABLE PROPSPECT OF BUSINESS RESCUE.**

17. The company, if given the opportunity, under the supervision of the business rescue practitioner, will be able to negotiate with the debtors and creditors and thereby settle any delays, disputes, amicably and independently in isolation from causing the entity to grind to a standstill. In order to achieve this , it is crucial for the entity to be allowed to trade unhindered, in the ordinary course of business, pursuant to the provisions of Chapter 6 of the Companies Act, 2008. This may include post rescue finance during business rescue proceedings.

18. The Public Interest (P.I.) Score is calculated as follows :

| | | | |
|---|---|---|---|
| No of ordinary shareholders | : 09 | = | 09 |
| No of Employees | : 25 | = | 25 |
| Total Liabilities | : R80.5 million (approx.) | = | 81 |
| Annual turnover | : R16.1 million (approx.) | = | 16 |
| Total | : | = | 131 |

19. If management, in conjunction, with the appointed Business Rescue Practitioner, is afforded a fair opportunity and reasonable prospect to restructure its affairs, business, collection and payment of its debt and other liabilities and implement such plans, I am of the opinion, that the entity has a reasonable prospect of success and therefore the entity can be rescued from this financial distress.

SOUTH AFRICAN POLICE SERVICE
CSC
2017 -06- 13
GREYTOWN
KWAZULU-NATAL

Deponent

Mr PHILANI GODFREY MAVUNDLA

Sworn and signed before me at Greytown on 13 day of June 2017 by the abovementioned Deponent, who acknowledges that he know and understand the contents of this Affidavit and he has no objection to taking the prescribed oath which reads as follows "I swear that the contents of this Affidavit is true, so help me God."

And further that he acknowledges that he regrets the said prescribed to be binding on his conscience, which oath was duly administered by me, as required by law.

Commissioner of Oaths

Full Name : SIBIYA SIBONGISENI

Business Address : 99 Pine Street
Greytown

Capacity : CST

Area : Greytown SAPS.

ST

# Resolution of PG MAVUNDLA ENGINEERING (PTY) LTD

Registration no: 1997/020620/07

Meeting of Directors, at 125 Voortrekker Street, Greytown, Kwazulu Natal, 3250, on 13 June 2017, at 9.00

Present: Philani Godfrey Mavundla
Sandile McDonald Mavundla

Whereas the financial position of the Company has been investigated and discussed, and whereas the directors have come to the conclusion that they have reasonable grounds to believe that :

PG MAVUNDLA ENGINEERING (PTY) LTD, is financially distressed; and
There appears to be reasonable prospects to rescue PG MAVUNDLA ENGINEERING (PTY) LTD

It was resolved that :

PG MAVUNDLA ENGINEERING (PTY) LTD, voluntarily begins Business Rescue Proceedings and place the Company under supervision, as envisaged in terms of Chapter 6 of the Companies Act 71 of 2008

We mandate Mr PHILANI GODFREY MAVUNDLA to sign all documents pertaining to this application.

That SUJAY ABBAI NAIDOO be nominated as Business Rescue Practitioner for PG MAVUNDLA ENGINEERING (PTY) LTD

PHILANI GODFREY MAVUNDLA

13/06/2017
Date

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## Certificate issued by the Commissioner of Companies & Intellectual Property Commission on Tuesday, June 13, 2017 at 15:46

## Disclosure Certificate: Companies and Close Corporations

Companies and Intellectual Property Commission

Registration Number 1997 / 020620 / 07

Enterprise Name PG MAVUNDLA ENGINEERING

### ENTERPRISE INFORMATION

| | | |
|---|---|---|
| Registration Number | 1997 / 020620 / 07 | |
| Enterprise Name | PG MAVUNDLA ENGINEERING (PTY) LTD | |
| Registration Date | 28/11/1997 | |
| Business Start Date | 28/11/1997 | |
| Enterprise Type | Private Company | |
| Enterprise Status | In Business | |
| Compliance Status | Compliant | |
| Financial Year End | February | |
| TAX Number | 9178216207 | |
| Addresses | **POSTAL ADDRESS** | **ADDRESS OF REGISTERED OFFICE** |
| | P O BOX 950<br>UMHLANGA ROCKS<br><br>4320 | 1 CAPITAL HILL ROAD<br>CLIFFDALE<br><br>3700 |

### ACTIVE MEMBERS / DIRECTORS

| Surname and First Names | Type | ID Number / Date of Birth | Contrib. (R) | Interest (%) | Appoint. Date | Address |
|---|---|---|---|---|---|---|
| MAVUNDLA, PHILANI GODFREY | Director | | 0.00 | 0.00 | 03/06/1998 | Postal: P O BOX 48490, QUALBERT, 4078<br><br>Residential: 6 GLEN PLACE, GLEN PARK, PINETOWN, 3610 |

### AUDITOR DETAILS

| Auditor Name | Type | Status | Appointment Date | Resignation Date | Email Address |
|---|---|---|---|---|---|
| NKONKI SIZWE NTSALUBA | Auditor | Resign | 1997-11-28 | | |
| **Profession Number:** | | | | | |
| CAMPBELL BROWN CHARTERED ACCOUNTANTS | Auditor | Name Change | 2006-12-01 | | |
| **Profession Number:** 900398 | | | | | |
| GRANT THORNTON | Auditor | Current | 2011-03-01 | ACTIVE | |
| **Profession Number:** 905690 | | | | | |

### CHANGE SUMMARY

1998-03-26 Principle Business Change on 26/03/1998.



Physical Address
*the dti* Campus - Block F
77 Meintjies Street
Sunnyside 0001

Postal Address: Companies
P O Box 429
Pretoria
0001

Docex: 256
Web: www.cipc.co.za
Contact Centre: 086 100 2472 (CIPC)
Contact Centre (International): +27 12 394 9500

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Companies and Intellectual Property Commission

a member of the dti group

# Disclosure Certificate: Companies and Close Corporations

Registration Number: 1997 / 020628 / 07

Enterprise Name: PG MAVUNDLA ENGINEERING

1998-03-26 Name Change on 26/03/1998.

UMNOTHOWETHU INVESTMENT

1997-11-28 Registration of CC/CO on 28/11/1997.

UMNOTHOWETHU INVESTMENT

1997-11-28 Accounting Officer Change on 28/11/1997.

1997-11-28 Member Change on 28/11/1997.

1998-06-03 Member Change on 03/06/1998.

2006-12-12 Accounting Officer Change on 01/12/2006.

P O BOX 950
UMHLANGA ROCKS

4320

Status : Address Change

2006-12-12 Accounting Officer Change on 01/12/2006.

2007-11-01 Registered Address Change on 22/11/2007.

1 CAPITAL HILL ROAD
CLIFFDALE

3700

2007-11-01 Postal Address Change on 22/11/2007.

P O BOX 950
UMHLANGA ROCKS

4320

2009-11-12 Status changes to Unknown.

Annual Return Non Compliance - Deregistration
Registration Date: 28/11/1997
AR Due Date: 01/11/2008
AR Late Date: 01/01/2009
Deregistration commence date: 01/07/2009
Deregistration action date: 12/11/2009

2010-06-24 Status changed to Unknown.

Annual Return Non Compliance - Cancellation of Deregistration

2011-04-29 Accounting Officer Change on 01/03/2011.

CAMPBELL BROWN CHARTERED ACCOUNTANTS2ND FLOOR
4 PENCARROW CRESCENT
PENCARROW PARK
LA LUCIA RIDGE OFFICE ESTATE
4019

P O BOX 752
DURBAN

4000

STATUS : NAME CHANGE

2011-04-29 Accounting Officer Change on 01/03/2011.



Physical Address
*the dti* Campus - Block F
77 Meintjies Street
Sunnyside 0001

Postal Address: Companies
P O Box 429
Pretoria
0001

Docex: 256
Web: www.cipc.co.za
Contact Centre: 086 100 2472 (CIPC)
Contact Centre (International): +27 12 394 9500

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NOTICE OF PERSONAL PARTICULARS

1. Any changes to the personal particulars in your ID Book must be communicated to all relevant parties.

NOTICE OF CHANGE OF ADDRESS

1. Keep the NOTICE OF CHANGE OF ADDRESS form in this pocket to report a change of address or a change in particular of your present address e.g. name of street and/or street number etc.

2. Hand in at or post to the nearest regional/district office of the DEPARTMENT OF HOME AFFAIRS

I.D. No. 670728 5365 080

S.A CITIZEN

SURNAME
MAVUNDLA

FORENAMES
PHILANI GODFREY

COUNTRY OF BIRTH
SOUTH AFRICA

DATE OF BIRTH
1967-07-28

DATE ISSUED
2012-11-16

ISSUED BY AUTHORITY OF THE DIRECTOR-GENERAL HOME AFFAIRS

SOUTH AFRICAN POLICE SERVICE
CSC
2017 -06- 13
GREYTOWN
KWAZULU-NATAL

[illegible]
2017/6/13

ST

PG Mavundla

projects pty(ltd)

Phone : 033 413 1090
Fax : 033 413 3014
Address : 125 Voortrekker Street,
Greytown 3250
: PO Box 10, Greytown, 3250

13/06/2017

Re : Nomination of Business Rescue Practitioner

1. The Public Interest (P.I.) Score is calculated as follows :

| | |
|---|---|
| No of ordinary shareholders : 09 | = 09 |
| No of Employees : 25 | = 25 |
| Total Liabilities : R80.5 million (approx.) | = 81 |
| Annual turnover : R16.1 million (approx.) | = 16 |
| Total | = 131 |

2. The principle business of the company is construction.

As per the Company resolution dated 13/06/2017, we hereby nominate Mr Sujay Abbai Naidoo, as Business Rescue Practitioner, and his response has been attached

Thanking You

Yours faithfully

PHILANI GODFREY MAVUNDLA DIRECTOR

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Sujay Abbai Naidoo CA(SA)

Business Rescue Practitioner

SABBAIN

14 St Andrews Road
Selborne
East London
5201
Fax: 086 6499180
Cell 081 387 6097

7 Carnation Street
Oatlo Manor
Gauteng
2090
Tele 011 0372004

14 Kingsbrook Road
Hatton Estate
Pinetown
3610
Tele 031 8237123
South Africa


**COMPANIES & INTELLECTUAL PROPERTY COMMISSION REPUBLIC OF SOUTH AFRICA**

13 June 2017

Sir/Madam

**PG MAVUNDLA ENGINEERING (PTY) LTD**
Registration no: 1997/020620/07

We refer to the above matter and confirm the following:

1. I accept the appointment as the Business Rescue Practitioner.
2. I confirm that I have the capacity to accept this appointment as the Business Rescue Practitioner.
3. I confirm that I have no interest in the above company.
4. I hereby state that I am not disqualified from being appointed as a Business Rescue Practitioner in terms of Section 138(1) or (d) of the Companies Act.

Yours truly

SANaidoo

Sujay Abbai Naidoo CA(SA)

57 [illegible]

NOTICE OF PERSONAL PARTICULARS

1. Any changes to the personal particulars in your ID Book must be communicated to all relevant parties.

NOTICE OF CHANGE OF ADDRESS

1. Keep the NOTICE OF CHANGE OF ADDRESS form in this pocket to report a change of address or a change in particular of your present address e.g. name of street and/or street number etc.

2. Hand in at or post to the nearest regional/district office of the DEPARTMENT OF HOME AFFAIRS

1

I.D. No. 680718 5110 089

S.A.CITIZEN

SURNAME
NAIDOO

FORENAMES
SUJAY ABBAI

COUNTRY OF BIRTH
SOUTH AFRICA

DATE OF BIRTH
1968-07-18

DATE ISSUED
2011-05-10

ISSUED BY AUTHORITY OF THE DIRECTOR-GENERAL HOME AFFAIRS

SOUTH AFRICAN POLICE SERVICE
CSC
2017 -06- 13
GREYTOWN
KWAZULU-NATAL

2017-06-13 [illegible] 057

Datum/Date Handtekening/Signature Rang/Rank

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TransUnion

ANNEXURE "POS-3"

**Business Information Report**

### Southern Africa Contact Details

- Johannesburg
  Tel: +27 11 214 6000
- Durban
  Tel: +27 31 584 9100
- Cape Town
  Tel: +27 21 401 4200
- Namibia
  Tel: +264 61 227 142
- Botswana
  Tel: +267 390 3535
- Zimbabwe
  Tel: +2634 794 488/9
- Swaziland
  Tel: +268 2505 7844

Email: directsupport@transunion.co.za
Web: www.transunion.co.za

| | | | |
|---|---|---|---|
| **Client Name** : Sarah Trent | | **From User** : TransUnion Credit Bureau | |
| **Company** : PAUL O'SULLIVAN & ASSOC P/L | | **To Email** : [redacted] | |
| **Subscriber** : PAUL O'SULLIVAN | | **Reference Number** : 0319255467 | |
| **Subscriber Number** : 40018 | | **Date Requested** : 23 October 2018 09:54 | |
| **Your Reference** : DurbCon | | **To Phone** : +27 83 4421776 | |
| **From Phone** : +27 11 214 6000 | | | |

## Subject Reported On

| | |
|---|---|
| **Subject Name** | : CMI INFRASTRUCTURES (PTY) LTD |
| **Ticket Number** | : 0319255467 |
| **Registration No** | : 201727167807 |
| **Address** | : P.O Box 4857, ATLASVILLE, GAUTENG, ZA, 1465 |
| **TU Number** | : 657315343 |
| **Enquiry Reason** | : Fraud Detection and Fraud Prevention |
| **Enquiry Amount** | : Not Applicable |

## Products Ordered

| Product | Sub Product | Name |
|---|---|---|
| 5123 | 5123 | Business Summary Report (Scan) |

## Management Guideline

**Risk Summary:**

- **Business** : The Subject is in business since 21 June 2017.
- **Judgments** : No matched records for this subject on our database
- **Defaults** : No matched records for this subject on our database
- **Principals** : 2 record(s) for the business on our database.

# Business Details

## Subject Identification

THIS SECTION DISPLAYS THE IDENTIFICATION DETAILS OF THE BUSINESS, INCLUDING CONTACT AND ADDRESS INFORMATION.

| | | | |
|---|---|---|---|
| **Business Name** | : CMI INFRASTRUCTURES (PTY) LTD | | |
| **Record Date** | : 11 Jul 2018 | **Business Type** | : Private Company |
| **Start Date** | : 21 Jun 2017 | **Tax Number** | : 9445740187 |

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| | | |
|---|---|---|
| Postal Address | : | P.O Box 4857<br>ATLASVILLE<br>GAUTENG<br>1465<br>ZA |

## Registration Details

THIS SECTION DISPLAYS THE REGISTRATION DETAILS OF THE BUSINESS

07 Aug 2017 Reflects the last date on which amendments were made at the Registrar of Companies.

| | | | | | |
|---|---|---|---|---|---|
| Registration Date | : | 21 Jun 2017 | Company Type | : | Private Company |
| Status Code | : | 03 | Registration Country | : | ZA |
| Status Description | : | In Business | Financial Year End | : | July |
| Registration No | : | 201727167807 | - | : | |
| Registered Address | : | 2ND FLOOR BLOCK A<br>OSBORNE LANE BEDFORDVIEW<br>GAUTENG<br>2007<br>ZA | | | |

## Subject Names

THIS SECTION DISPLAYS ALL NAMES ASSOCIATED WITH THE SUBJECT.

**Business Names**

Name : CMI INFRASTRUCTURES (PTY) LTD (07 Aug 2017)

## Registered Principals

DISPLAYS MEMBERS ACCORDING TO THE REGISTRAR

| | | | | | |
|---|---|---|---|---|---|
| Surname | : | PORCELLI | ID Number | : | YA9744305 |
| Initials | : | P | Contribution % | : | 0.00 |
| Surname | : | MAVUNDLA | ID Number | : | 6707285365080 |
| Initials | : | P | Contribution % | : | 0.00 |

# Business Adverse Details

## Civil Court Record

DISPLAYS THE CIVIL COURT RECORDS AS A RESULT OF A COURT ORDERING A BUSINESS TO MAKE PAYMENT ON DEBT OR AN OUTSTANDING ACCOUN A JUDGMENT REMAINS ON A BUSINESS'S PROFILE FOR 5 YEARS.

Message : No CIVIL COURT RECORD exists in our files for the Subject.

## Default Data

DISPLAYS DEFAULT DATA AS SUPPLIED TO TRANSUNION BY CREDIT GRANTORS. IN RESPECT OF ENTITIES OR CREDIT AGREEMENTS THAT FALL WITHIN THE AMBIT OF THE NATIONAL CREDIT ACT (SOUTH AFRICA) ANY DEFAULT AGAINST AN ENTITY REMAINS ON ITS PROFILE FOR 1 YEAR. FOR ALL OTHER ENTITIES OR CREDIT AGREEMENTS THE ABOVE 1 YEAR PERIOD WILL APPLY TO DEFAULT DATA WITH THE EXCEPTION OF DEFAULTS RELATED TO BAD DEBT WRITTEN OFF, ACCOUNTS HANDED OVER, REPOSSESSION AND CREDIT CARDS REVOKED, ALL OF WHICH WILL REMAIN FOR A 2 YEAR PERIOD.

Message : No DEFAULT DATA exists in our files for the Subject.

# Principal Details

## Principal Summary

DISPLAYS A SUMMARY OF THE INFORMATION AVAILABLE ON THE PRINCIPALS OF THE BUSINESS.

PORCELLI, PAOLO (YA9744305)

| | | | | | |
|---|---|---|---|---|---|
| Surname | : | PORCELLI | Notarial Bonds | : | Not Established |
| First Name | : | PAOLO | Confirmed By | : | Registrar |
| ID Number | : | YA9744305 | Position | : | Director |
| Date Of Birth | : | 17 Nov 1967 | Date Started | : | 21 Jun 2017 |
| Civil Court Records | : | Not Established | Deeds | : | NO |

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| | | | | | |
|---|---|---|---|---|---|
| Default Data | : | Not Established | Record Date | : | 15 Apr 2018 |
| Notices | : | Not Established | | | |

MAVUNDLA, PHILANI (6707285365080)

| | | | | | |
|---|---|---|---|---|---|
| Surname | : | MAVUNDLA | Notices | : | None |
| First Name | : | PHILANI | Notarial Bonds | : | None |
| Second Name | : | GODFREY | Confirmed By | : | Registrar |
| ID Number | : | 6707285365080 | Position | : | Director |
| Date Of Birth | : | 28 Jul 1967 | Date Started | : | 21 Jun 2017 |
| Civil Court Records | : | Yes | Deeds | : | YES |
| Default Data | : | None | Record Date | : | 15 Apr 2018 |

# Deeds Details

## Deeds Summary

DISPLAYS A SUMMARY OF THE PROPERTIES OWNED, ON THE TRANSUNION DATABASE, PER EACH DEEDS OFFICE. THIS INFORMATION IS SUPPLIED BY THE DEEDS OFFICE OF SOUTH AFRICA AND IS UPDATED ON A MONTHLY BASIS. THE BOND INFORMATION DISPLAYED SHOWS ACTIVE BONDS LINKED TO THE PROPERTY WHICH MAY NOT BE IN THE NAME OF THE OWNER SEARCHED ON.

Message : No deeds information found to produce summary



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Annexure "POS-4" 110

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 34120/2018

In the matter between:-

BOTJHENG WATER (PTY) LTD Applicant

and

COOPERATIVA MURATORI CEMENTISTI RAVENNA Respondent

---

RESPONDENT'S ANSWERING AFFIDAVIT

---

I, the undersigned,

PETER GUIDUCCI

do hereby make oath and state that:-

DEPONENT

1. I am an adult and Chief Financial Officer of the Respondent employed at its offices situated at Eastwood Corner, 11B Riley Road, Bedfordview in Johannesburg.

2. I hold the qualifications, expertise and experience set out in my Curriculum Vitae, a copy whereof is attached hereto marked Annexure "A1".

3. I am duly authorised to depose to this affidavit on behalf of the Respondent. Attached hereto marked Annexure "A2" is a copy of the resolution confirming my authority.

4. The facts contained herein are, save where otherwise indicated by the context, within my personal knowledge and belief and are furthermore to the best of my knowledge and belief both true and correct.

5. To the extent that I make legal submissions herein, I rely on the advice of the Respondent's legal representatives, whose advice I accept.

6. I have read the Applicant's application. My answers to the allegations contained in the founding affidavit are set out below.

7. To the extent that I fail to deal with any of the allegations contained in the founding papers hereunder, my failure to do so does not constitute an acknowledgement of the correctness or accuracy of such allegations.

8. Prior to dealing with the specific allegations made by the Applicant, I have been advised to set out the essence of the defences to the relief claimed and to explain to this Honourable Court why the Applicant's application is ill-conceived and should be dismissed with costs on the attorney and own client scale.

9. The Applicant has brought this winding-up application in terms of section 344(f) and 345 of the Companies Act, 61 of 1973 ("the 1973 Companies Act") on two (2) basis:-

9.1. That it is a creditor of the Respondent; and

9.2. That the Respondent is unable to pay its debts.

10. Accordingly, the Applicant must satisfy this Honourable Court that the Respondent is commercially insolvent in that the Respondent cannot pay its debts.

11. The Respondent has never disputed and does not dispute that it is indebted to the Applicant for payment of the amounts contained in the settlement agreement, which is due for repayment by no later than 15 April 2019. The Respondent has every intention of repaying its debt, together with interest. In addition, I am confident that the Respondent is in a financial position to do so.

12. I deny that the Respondent is factually or commercially insolvent, that its liabilities exceed its assets or that it cannot pay its debts.

13. The Respondent is the South African office of a reputable and respected international company called **Cooperativa Muratori & Cementisti – C.M.C di Ravenna** which is incorporated in Italy (**"the CMC Group"**). Accordingly, the Applicant's citation of the Respondent as **"Cooperativa Muratori Cementisti Ravenna"** is incorrect.

14. The Respondent is one and the same company as the company incorporated in Italy. The Respondent is "Cooperativa Muratori & Cementisti – C.M.C di Ravenna" and is

registered in South Africa as an external company as required by the company laws of South Africa.

15. The Respondent's financial position in terms of its business operations in South African and internationally is in excellent condition. Its assets far exceed its liabilities and it is financially sound.

16. There is no basis for the Applicant to believe that there are any grounds for the winding-up of the Respondent's South African office.

17. There are material defects and anomalies in the Applicant's winding-up application demonstrating not only that the bringing of this application is ill-advised and ill-considered but also that it is fatally flawed.

18. The only evidence in support of the Applicant's case is the fact that the Respondent was late in paying its first instalment to the Applicant in terms of the settlement agreement, and which instalment was due on 24 August 2018 but paid on 10 September 2018.

19. I respectfully submit that the Applicant has failed to make out a sustainable basis for the application which it has brought against the Respondent.

20. The Respondent is both commercially and factually solvent. As demonstrated below this position holds true for both the Respondent's South African office and the CMC Group.

21. The Respondent is a successful and well-established business with over one billion Euros in turnover. Both the Respondent's South African office and the CMC Group are in good financial standing and their assets exceed their liabilities.

22. The Applicant's contentions that the Respondent is unable to pay its debts and falls to be liquidated is false. I suspect that the Applicant has concocted and engineered these allegations *in terrorem* and in a transparent attempt to embarrass the Respondent.

23. The Applicant is legally represented yet it has ignored the established principles and requirements for the winding-up a company in terms of section 344 and 345 of the Companies Act in order to somehow:-

23.1. impute the Respondent's delay in payment as evidence of a general inability to pay its debts; and

23.2. ignore the commercial strength of the Respondent's South African office and the CMC Group as a whole;

24. The Applicant's contention that the Respondent is unable to pay its debts is disingenuous and misleading given that it relies only on the delayed payment of the first instalment in terms of the Consent Order.

25. The Applicant has adduced no evidence that the Respondent is unable to pay its debts.

26. The delay in paying the first instalment does not demonstrate the Respondent's inability to pay its debts nor does it prove that the Respondent is factually or commercially insolvent.

27. I point out that the Respondent paid the first instalment of US$750,000 to the Applicant approximately two (2) weeks after the due date and paid the second instalment of US$200,000 ahead of time insofar as the due date of the second instalment is concerned.

28. The Applicant alleges that the Respondent is indebted to the Applicant in the amount of R22,605,000 (at an exchange rate of R15.07 to 1 US$ Dollar) plus interest at 14% on the amount of US$2,250,000 from 25 August 2018 to 9 September 2018 and interest at 14% on the amount of US$1,500,000 from 10 September 2018 to date of final payment.

29. I deny the correctness of the Applicant's computation of the alleged outstanding amounts due by the Respondent.

30. On the 5 September 2018 the Applicant's attorney, on behalf of the Applicant, demanded that the Respondent make payment of the full amount owing plus interest within 24 hours.

31. The Applicant has failed to satisfy this Honourable Court that the Respondent is commercially or factually insolvent, or that it is unable to pay its debts. There is no room for the importation of these legal conclusions without any facts to underpin

such conclusions. The uncorroborated allegations are therefore deliberate and misleading.

32. The Applicant's conclusions conflict with the contents of the Respondent's audited financial statements and management accounts proving that the Respondent is able to pay debts.

33. It is apparent that the Applicant is seeking a winding up order from the above Honourable Court against the Respondent on untenable and unsustainable grounds.

34. It is submitted that the Honourable Court grant or dismiss the application for liquidation or to make such other order as it may deem just.

35. I attach hereto a list of all the financials related to the Respondent's South African office and the CMC Group:-

35.1. A set of management accounts for the Respondent's South African branch at Annexure "B" that includes its income statement and balance sheet for the period 1 January 2018 to 30 September 2018;

35.1.1. An interim consolidated financial report for the CMC Group as at 30 June 2018 at Annexure "D";

35.1.2. An audited consolidated financial report for the CMC Group as at 31 December 2017 at Annexure "E".

36. I provide a short summary of each financial record below.

37. These financial records demonstrate *inter alia* the following:

37.1. At page 37 to 38 of Annexure "D", the Respondent's CMC Group currently has in excess of 50 projects around the world;

37.2. A schedule of key international projects undertaken by the CMC Group appears at page 36 – 37 of **Annexure "E"**;

37.3. At page 35 of Annexure "E" the CMC Group employs over 6,600 employees.

37.4. A schedule of major projects current undertaken by the Respondent's South African office is set out at **Annexure "F"**. I can confirm that the Respondent's South African office is the lead contractor or sole contractor of these projects. The contract value of these projects are in excess of R5.5 Billion;

37.5. I can confirm that the Respondent's South African office employs approximately 360 people comprising 100 office employees and 260 workers. The Respondent's South African office also contracts approximately 20 sub-contractors who in turn employ approximately 200 employees and workers.

38. The Respondent has a proud history of delivering world class infrastructure projects. I refer to page 6 of Annexure "E" setting out the various business areas that the Respondent has focused on to date.

39. This Honourable Court is required to consider these factors in the exercise of its discretion. The winding-up of the Respondent's South African office would lead to financial hardship and prejudice its employees, creditors and the current construction projects.

40. The Applicant and its legal representatives have ignored the established principles applicable to the winding-up of companies under the new dispensation of the 2008 Companies Act in circumstances where less onerous options are available to it.

41. I contend that no case has been made to satisfy this Court to exercise its wide discretion to grant the relief sought by the Applicant. The Applicant's winding-up application is ill-advised and ill-conceived.

42. The Applicant has launched this winding-up application despite the fact that there are no objective facts relied upon by it to sustain its contention that the Respondent is unable to pay its debts or that it is commercially insolvent.

43. In view of the fact that the Applicant is legally represented in this matter it ought to have been aware of the established principles applicable to winding up a company on the grounds upon which it is seeking relief in this matter.

44. The only reasonable and plausible conclusion is that the application has been brought with the intention of causing the maximum amount of embarrassment, inconvenience and damage to the Respondent and has been brought *in terrorem*.

45. The founding affidavit is replete with allegations that are spurious, unsubstantiated and misleading. The application is therefore *mala fide*.

46. I am advised that this Court has an inherent right to prevent an abuse of its process in the form of frivolous or vexatious litigation. That said, there was never a basis for the winding-up of the Respondent. Curiously the Applicant persists with its winding-up application despite the fact that no proper case has been made out for the winding up of the Respondent. This constitutes an abuse of process.

47. Ironically the applicant has brought this winding-up application on the basis of a delay of 2 weeks in paying the instalment under circumstances where, if the relief it is seeking were to be granted payment would be delayed until such time as a final liquidation and distribution account has been prepared by the liquidators. I am advised that this process would take many months if not years to be finalised. It would accordingly have the effect of actually delaying payment to the Applicant.

48. I believe the Applicant is motivated by something other than a *bona fide* attempt to enforce payment of its claim.

49. This Application has clearly been launched *in terrorem* and constitutes a deliberate attempt by the Respondent and its legal advisors to cause maximum embarrassment and inconvenience to the Respondent. This embarrassment and inconvenience includes the Respondent having to deal with reputational damage to the Applicant's subcontractors, joint venture partners, bankers and clients in addition to the inconvenience and costs of having to oppose the Application.

50. The launching of this Application by the Applicant is unconscionable when considered against the relevant facts as detailed in this Answering Affidavit.

51. I turn now to deal with the Respondent's financial position, in particular the evidence that it is commercially and legally solvent.

**FINANCIAL STATUS OF THE RESPONDENT**

52. I deal first with the financial position of the Respondent's South African office. I then deal with the financial position as of the CMC Group.

**B1. The South African Office's Financial Position**

53. I refer to the most recent management accounts for the Respondent's South African office for the month ending 30 September 2018 being Annexure "B" hereto.

54. The figures contained therein are the cumulative amounts for the 9 months period from 1 January 2018 to 30 September 2018.

55. The management accounts show the following insofar as the Respondent's South African office's income statement at 30 September 2018 calendar year is concerned (at Annexure "B"):-

55.1. The Respondent's total revenues for the 2018 year is R672,783,652;

55.2. The Respondent's total expenses for the 2018 year is R649,236,515;

55.3. The Respondent's **net cash position** for the year is a **positive R36,408,076** as at 30 September 2018;

55.4. The Respondent's profit before tax is **R22,424,365** as at 30 September 2018.

55.5. The Respondent's profit after tax is **R16,145,543** as at 30 September 2018.

56. I point out that the Respondent's **profit before tax** is **R22,424,365**. This amount is sufficient for purposes of settling the full outstanding amount owed by the Respondent in terms of the Consent Order being an amount of US$1,100,000 as at the date of deposing to this answering affidavit.

57. I refer to the Rand/Dollar exchange rate performance to date as per the Reserve Bank of South Africa at **Annexure "C"** hereto. The information was sourced at www.resbank.co.za/Research/Rates/Pages/SelectedHistoricalExchangeAndInterestRates.aspx.

58. The management accounts also contains the balance sheet for the Respondent's South African office for the 2018 calendar year setting out *inter alia* the following (at **Annexure "B"**):-

58.1. The Respondent's fixed assets total an amount of **R62,741,542;**

58.2. The Respondent's total assets amount to the sum of **R2,771,486,678;**

58.3. The Respondent's liabilities total an amount of **R2,151,156,865;**

58.4. In the result the Respondent's total assets exceed its total liabilities by a positive amount of R620,329,813 as at 30 September 2018.

58.5. I specifically point out that the Respondent's South African office has a retained income item in the amount of R600,737,370.

59. I submit that the Management Accounts demonstrate the following regarding the financial status of the Respondent's South African office:-

59.1. The Respondent's South African office is commercially solvent in that its assets exceed its liabilities;

59.2. The Respondent's South African office is factually solvent in that its assets exceed its liabilities;

59.3. The Respondent's South African office has substantial realisable assets;

59.4. The Respondent's South African office is able to pay its debts; and

59.5. The Respondent's South African office has sufficient profits to settle the outstanding amounts due to the Applicant.

60. In the result the Applicant's allegations regarding the Respondent's financial status are false.

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**B2. The CMC Group's Financial Position**

61. I attach the CMC Groups' consolidated interim financial report as at June 30, 2018 as Annexure "D" hereto.

61.1. As appears at page 3 of the report the Respondent has offices in *inter alia* Rome, Milan, Algeria, Angola, Argentina, Bulgaria, China, Egypt, France, India, Kenya, Laos, Lebanon, Lesotho, Malawi, Mozambique, Namibia, Nepal, Pakistan, Philippines, Singapore, Sweden, Thailand, Zambia and USA.

61.2. At page 9 of the report there appears a list of new projects awarded to the CMC Group in 2018. In the first half of 2018, the CMC Group was awarded new contracts for approximately Euro 1,343.3 million. Special mention is made of the Durban port project in South Africa valued at approximately Euro 255 million.

61.3. At page 11 - 14 of the report there is a summary of the CMC Group's global activities. Special mention is made to South Africa and the Respondent's historical presence in this country at page 12.

61.4. A list of the CMC Group's major international projects is set out on page 37 – 38. There are 4 major projects in South Africa with a contract value in excess of Euro 400 million.

62. The CMC Group's summarised consolidated balance sheet for the six month period ending 30 June 2018 provides as follows (Annexure "D" at page 30 of the report):-

62.1. The CMC Group has current assets of **Euro 1,708.8 million;**

62.2. The CMC Group has current liabilities of **Euro 1,044 million;**

62.3. The CMC Group current assets exceeded its liabilities by a positive amount of **Euro 664.6 million;**

62.4. The CMC Group has net invested capital (assets) of **Euro 977,6 million;**

62.5. The CMC Group has net adjusted financial position (liabilities) of **Euro 825,3 million;**

62.6. The CMC Group's assets exceeded its liabilities by a positive amount of Euro **152,3 million;**

63. The CMC Group's summarised consolidated **statement of income** for the **six month period ending 30 June 2018** provides as follows **(Annexure "D"** at **page 24** of the report):-

63.1. The CMC Group has a total turnover of Euro 514.4 million;

63.2. The CMC Group has an operating profit of **Euro 37.5 million;**

63.3. The CMC Group has a profit before tax of **Euro 7.3 million;**

63.4. Significantly, the CMC Group's total net working capital temporarily **increased by Euro 159.5 million** over the 6 month period from 31 December 2017 to 30 June 2018 (at **page 32** of the report).

64. I also attach the CMC Group's consolidated audited financial report as at 31 December 2017 as Annexure "E" hereto. The following is significant:-

64.1. A list of the CMC Group's international offices is set out (Annexure "E" at page 4-5).

64.2. A summary of the business areas that the CMC Group specialises in is set out at page 6 and includes transport sector, the water and irrigation works, ecology and environment, building projects , water control and marine works, and integrated territorial development projects.

64.3. A key update of the relevant markets is provided (Annexure "E" at page 13) with a special mention regarding the growth forecasts for South Africa at (Annexure "E" page 14).

64.4. An overview of the CMC Group's performance is provided (Annexure "E" at page 16). I point out that the CMC Group's revenue increased by Euro 55.7 million and its net income rose to Euro 32.8 million. The CMC Group's new orders increased Euro 1,623.3 from Euro 1,124.3 in 2016. The CMC Group's adjusted net financial position increased by Euro 94.3 million as did its Net working capital by Euro 136.5 million.

65. The Respondent's consolidated audited financial report provides the following insofar as its consolidated balance sheet for the year ending 31 December 2017 is concerned (Annexure "E" at page 29):-

65.1. The Respondent has current assets of Euro **1,511.2 million**;

65.2. The Respondent has current liabilities of Euro **1,006.1 million**;

65.3. The Respondent's current assets exceeded its liabilities by a positive amount of Euro **505.1 million**;

66. The CMC Group's consolidated **statement of income** as at 31 December 2017 provides inter alia the following (**Annexure "E"** at **page 24** of the report):-

66.1. The CMC Group has a total revenue pf **Euro 1,118.9 million**;

66.2. The CMC Group has an operating profit of **Euro 89.4 million**;

66.3. The CMC Group has a profit before tax of **Euro 32.8 million**;

66.4. The CMC Group has a consolidated net income of **Euro 14.5 million**.

67. A list of the Respondent's major global projects are set out on **page 36** of the report. The major projects in South Africa is also set out at **page 36 – 37**.

68. The CMC Groups employees are set out at **page 35** being a work force in excess of **6,600 persons**.

69. For the reasons set out above, I submit that the value of the Respondent's assets exceed its liabilities. The Respondent also has substantial assets that can be realised to satisfy its debts, if necessary, and still carry on its business.

**B4. The Respondent's List of Current Projects in South Africa**

70. I wish to set out a short summary of the current project currently undertaken by the Respondent in South Africa. A schedule is attached at Annexure "F" hereto:

70.1. Contract number NRA N002-260-2010/1 which are improvements to the Mount Edgecombe Interchange on the National Route 2 Section 26. This contract is carried out by the Respondent only. The employer is SANRAL. The Total value of the project is approximately R915 million and is expected to be completed on 1 December 2018;

70.2. Contract number 11/2012/88 which is for the upgrading of the Sebokeng Waste Water Treatment Works, Module 6 and sludge handling facility. This contract is carried out by the Respondent only. The employer is Rand Water. The total value of the project is approximately R370 million and is expected to be completed on 1 December 2018;

70.3. Contract number NRA C002-260-2009/IF Section 32 – IRPTN Route C9 Phase 5. which is for the construction of the Cornubia Interchange to Meridian Drive, Umhlanga in Durban, KZN. This contract is carried out by the Respondent only. The employer is Ethekwini Municipality. The total value of the project is approximately R317 million and is expected to be completed on 31 December 2018;

70.4. Contract number WP0485-WTE which is for the rendering of services for the design and build Service for the emergency upgrade of the Thukela

Goedertrouw Scheme. This contract is carried out by the Respondent only. The employer is Department of Water and Sanitation. The total value of the project is approximately R602 million and is expected to be completed on 1 1 July 2019;

70.5. Contract number DCT Berth 203 – 205 which is for the reconstruction deepening and lengthening of the Durban Port in Durban, KZN. This contract is a joint venture carried out by the Respondent and other partners. The Respondent is the lead partner with 35% stake. The employer is Transnet. The total value of the project is approximately R3,6 billion and is expected to be completed on August 2023;

71. These projects exclude the Respondent's projects outside South Africa. There are several other major projects currently undertaken in Southern Africa and Africa. As demonstrated above, the CMC Group has dozens of other major projects in all the major first and third world markets and territories.

72. I turn now to deal with the allegations in the founding affidavit to the extent that it may be necessary to do so. If there are allegations in the founding affidavit which conflict with what I have said above, they are disputed and denied.

**PART C: PATTERN OF DILATORY BEHAVIOUR**

73. The Applicant has endeavoured to cast aspersions on the conduct of the Respondent by alleging that it has indulged in a pattern of delay insofar as the debt underpinning the winding-up application is concerned.

74. The legal proceedings to which the Applicant refers were two Arbitrations in respect whereof it was ultimately agreed that they would be heard together. An accelerated, and with hindsight impractical, timetable was agreed to by the parties in attempt to finalise the disputes as quickly as possible.

75. The timetable for the arbitrations became protracted as a result of delays on both sides. In this regard I attach hereto marked **Annexure "G"** a letter dated 3 April 2017 from the Applicant's attorney in which an extension of approximately a month was requested in which to file its statement of claim. The timetable also came under pressure as a result of delays in the filing of witness statements caused by initially the illness and ultimately the death of the father of the Applicant's main witness.

76. In view of the above the suggestion that the Respondent deliberately sought to delay matters is totally spurious. In this regard it is also pointed out that the settlement amount of US$2,250,000 was substantially less than half the amount claimed by the Applicant in the two arbitrations. The suggestion that the defence of the claims by the Respondent was to delay payment is unfounded and *mala fide*.

**PART D: *AD SERIATIM* ANSWERS**

77. Ad paragraph 1

77.1. I deny that the deponent is a director of the Applicant and put him to the proof thereof.

78. Ad Paragraph 2

78.1. I deny that the facts set out in the founding affidavit are true or correct.

78.2. The deponent states that the Applicant has formulated its case based on the advice it received from the Applicant's legal representatives. For the reasons set out above, it will be argued that this winding-up application be dismissed with a cost order *de bonis propriis* against the Applicant's legal representatives.

79. Ad Paragraph 3

79.1. I deny the deponent is authorised to represent the Applicant or that he is authorised to depose to the founding affidavit on behalf of the Applicant.

79.2. The alleged authority at annexure "FA1" refers to a meeting of the Applicant's board of directors. I deny that there were multiple directors at the meeting and I put the Applicant to the proof thereof in particular to identify the directors who attended the meeting.

80. Ad Paragraph 4

80.1. I admit the name of the Applicant however I deny the remainder of the allegations contained in this paragraph and put the Applicant to the proof thereof.

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81. Ad Paragraph 5

81.1. I deny the contents of this paragraph.

81.2. The Applicant has incorrectly cited the Respondent as "Cooperativa Muratori Cementisti Ravenna" is incorrect.

81.3. The Respondent is Cooperativa Muratori & Cementisti di Ravenna which is incorporated in Italy (defined above as **"the CMC Group"**). The Respondent's South African office and the CMC Group is one and the same entity.

82. Ad Paragraph 6

82.1. The Respondent is registered in South Africa as an external company in compliance with the company laws of this country.

82.2. The Respondent's South African office and the CMC Group is one and the same entity.

82.3. Accordingly, the financial strength of the Respondent's South African office must be considered in context of the CMC Group as a whole as set out above.

83. Ad Paragraph 7

83.1. I do not deny the contents of this paragraph.

84. Ad Paragraph 8 – 11

84.1. I note the contents of these paragraphs.

85. Ad Paragraph 12 - 14

85.1. I do not deny the contents of these paragraphs.

86. Ad Paragraph 15

86.1. I deny any suggestion or impropriety conduct on the part of the Respondent or its attorney of record.

86.2. As set out above, the quantum of the Applicant's claim was contrived, over-inflated and unsupported by the facts.

86.3. The exaggeration of the Applicant's quantum is substantiated by the fact that the latter initially instituted legal proceedings against the Respondent's for an amount which with interest was in excess of US$8 million but then settled for an amount of US$2.250 million.

87. Ad Paragraph 16

87.1. As indicated above both parties were responsible for delays.

87.2. The allegation that the Applicant *"was therefore left with no choice but to pursue the arbitration"* is disingenuous. The Respondent was obliged to defend itself in the arbitration proceedings because of the totally exorbitant and unjustified amounts claimed by the Applicant.

87.3. The suggestion that *"somewhat curiously, at the commencement of the hearing of the quantum dispute the Respondent then advised the Applicant of its desire to settle the dispute, rather than proceed with the arbitration"* is also disingenuous. Both parties expressed the wish to settle the matter rather than to have to go through a lengthy arbitration hearing.

87.4. Save for the above, I deny the allegations contained in this paragraph and reiterate what has been stated above.

88. Ad Paragraph 17

88.1. I deny that the period of 6 days to reach a negotiation outcome is protracted. This is a reasonable period given the amounts involved and the underlying cause of action.

89. Ad Paragraph 18 – 19

89.1. I do not deny the allegations contained in these paragraphs.

90. Ad Paragraph 20

90.1. I note the contents of this paragraph insofar as it accords with what is contained in Annexure "FA5"

91. Ad Paragraph 21

91.1. I note the contents thereof.

91.2. I deny the Applicant has complied with the provisions of clause 5 of the Settlement Agreement.

92. Ad Paragraphs 22 and 23

92.1. The allegations contained in these paragraphs are admitted.

93. Ad Paragraph 24

93.1. I admit the delay in payment of the first instalment however I deny that this demonstrates an inability of the Respondent to pay its debts as envisaged in section 344 and 345 of the Companies Act, 1973.

93.2. There is simply no basis for the winding-up of the Respondent and this winding-up application is ill-advised, malicious and brought with ulterior motive. It constitutes an abuse of process.

94. Ad Paragraph 25

94.1. I admit the contents of this paragraph.

94.2. The first instalment was paid in full on 10 September 2018. The second instalment was paid in full on 21 September 2018 and before it was due.

The payment for October was made today as more fully appears from Annexure "J" hereto. The latter payment has also been made prior to the stipulated due date.

95. Ad Paragraph 26

95.1. The allegations contained in this paragraph are noted.

96. Ad Paragraph 27 – 28

96.1. I note the contents of these paragraphs.

97. Ad Paragraph 29

97.1. The innuendo that the Respondent's attorney deliberately deleted the letter dated 5 September 2018 from Kampel and thereby acted unprofessionally or unethically is rejected. It appears from Annexure "H" hereto that the Respondent's attorney had not only read the letter of 5 September 2018 from Kampel but had at 15:13, which is less than an hour after having received the letter, forwarded a copy of the letter to the Respondent requesting instructions.

97.2. The Respondent and its attorney are at a loss to explain as to why a notification indicating that the letter was *"not read"* was received by Kampel.

97.3. It is apparent from the facts that the Respondent's attorney of record acted diligently and professionally and with all due expedition in order to obtain any further instructions from the Respondent.

97.4. The suggestion or innuendo that the conduct of the Respondent's attorney was in any way untoward is vexatious and malicious.

98. Ad Paragraph 30

98.1. I note the contents of this paragraph.

99. Ad Paragraph 31

99.1. It is telling that the Applicant's attorney of record did not see it fit to contact the office of the Respondent's attorney of record or to contact the Respondent's attorney of record personally before making these unjustified allegations.

99.2. Save for the above, I note the contents of this paragraph.

100. Ad Paragraph 32

100.1. The allegations herein contained are noted.

101. Ad Paragraph 33



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101.1. I deny the allegations contained in this paragraph for the reasons already set out above.

102. Ad Paragraph 34

102.1. The late payment merely evidences a delay. It does not demonstrate the Respondent's inability to pay its debts. The allegation is ill-advised and ill-considered and deserves this Honourable Court strongest rebuke.

102.2. Save for the above I deny the remainder of the allegations contained in this paragraph and repeat what I have stated above in this regard.

103. Ad Paragraph 35

103.1. I deny the contents of this paragraph for the reasons already set out herein.

104. Ad Paragraph 36 – 39

104.1. I deny that a proper case has been made out for the relief sought by the Applicant for the reasons already set out above.

105. Ad Paragraph 40

105.1. I point out that the Applicant is legally represented and ought to have anticipated the established requirements necessary for purposes of seeking



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the winding-up of a company in terms of section 344 and 345 of the Companies Act, 1973 which they failed to do.

105.2. The Applicant and its legal representatives ought to have considered the provisions of the Settlement Agreement in particular the requirements set out therein.

105.3. In the result, I submit that this winding-up application be dismissed with costs, including a cost order *de bonis propriis*.

105.4. Further legal argument will be made at the hearing of this matter in this regard.

105.5. I refer to the confirmatory affidavit of Mr Terry Mahon, the Respondent's attorney of record, that is attached hereto marked **Annexure "I"**.

SUID-AFRIKAANSE POLISIEDIENS
DIENSSTASIEBEVELVOERDER
BEDFORDVIEW
2018 -10- 17
THE STATION COMMANDER
BEDFORDVIEW
SOUTH AFRICAN POLICE SERVICE

**DEPONENT**

*I hereby certify that on this the ..17..th day of October 2018, in my presence at the deponent signed this affidavit and declared that he knows and understands the contents hereof, had no objection to taking this oath and considers this as binding on his conscience and that the provisions contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.*

COMMISSIONER OF OATHS

Full name : Irene Zulu
Designation : Constable
Area Appointed : Bedfordview
Street address : 100 Van Buuren

# Annexure "D"

## INTRODUCTION

This report was prepared by the Board of Directors of COOPERATIVA MURATORI & CEMENTISTI - CMC DI RAVENNA on September 10, 2018 and shows the consolidated results of the CMC Group for the six-month period ended June 30, 2018.

Unless stated otherwise, figures are shown in millions of euro.

Most of the Group's companies operate in the construction sector. Given the current country exposure, results may be seasonally affected by weather conditions.

## KEY EVENTS

- In the first half of 2018, we were awarded new contracts for approximately €1,343.3 million, of which €376.9 million in Italy and €966.4 million overseas.

  The main contracts awarded in the year are summarised below:

  **Italy**

  - High speed railway in Liguria – Cociv RFI. The total contract value is approximately €300 million (51% CMC).
  - University of Rome – construction of new buildings. The total contract value is approximately €30 million (100% CMC).
  - M.N. Metropolitana di Napoli SpA - Line 1 construction of railway tunnels on the Poggioreale-Capodichino section. The total contract value is approximately € 37.5 million (100% CMC).

  **International**

  - Kuwait – primary urbanisation for the South Al Mutlaa Housing Project. The project includes construction, completion and maintenance of roads and infrastructure networks for four of the eight districts awarded to a Chinese contractor for the construction of a new city 40 km from Kuwait City. The total contract value is approximately €275 million (100% CMC).
  - South Africa – port of Durban reconstruction. The total contract value is approximately €255 million (100% CMC).
  - Poland - construction of the Gdansk North Port. The total contract value is approximately €92 million (100% CMC).
  - Mozambique – Anadarko expansion camp. The total contract value is approximately €70 million (100% CMC).
  - USA – Restructuring of the Cabot Yard bus and train maintenance facilities of the MBTA (Massachusetts Bay Transportation Authority) – Boston. The total contract value is approximately €194 million (share of CMC / LMH 50%), and it is the largest project secured by CMC in the USA.
  - USA - New contracts acquired by our US subsidiaries LMH in Boston area and Di Fazio Industries in New York area for a total amount of €103 million (100% CMC).

- On 6 February, two members of the Uganda National Road Authority, Director Richard Wabuna and Blea Kambeho of the Procurement department, visited the CMC headquarters in Ravenna, as a due diligence in the context of our expected award of the Busega-Mpigi Road project. The two representatives were received by Chairman Alfredo Fioretti and the Director of Corporate Technical

# Annexure "F"

c.m.c. ravenna south africa branch

**List of project under execution in South Africa, situation as at 11/10/2018**

| PROJECT AND WORK CARRIED OUT | EMPLOYER | Currency | Total value of the project | Amount executed as at 11/10/2018 | Amount still to be executed | Amount still to be executed CMC portion | Starting date | Expected completion date(od) |
|---|---|---|---|---|---|---|---|---|
| Contract No. NRA N.002-260-2010/1: Improvements to the MT. Edgecombe Interchange on National Route 2 Section 26 (KM 3.7)<br>Project carried out by CMC di Ravenna only | SANRAL | Rand | 915 890 024 | 897 921 654 | 17 968 370 | 17 968 370 | 2013/05/02 | 2018/11/30 |
| Contract No. 11/2012/88 The Upgrading of the Sebokeng Waste Water Treatment Works: Module six and sludge handling facility - Civil Works<br>Project carried out by CMC di Ravenna only | Rand Water | Rand | 370 200 000 | 354 714 112 | 15 485 888 | 15 485 888 | 2013/07/30 | 2018/11/30 |
| Contract No. NRA C.002-260-2009/IF - Section 32 - IRPTN-Route C9-Phase 5 - Cornubia Interchange to Meridian Drive, Umhlanga (IT-13802)<br>Project carried out by CMC di Ravenna only | Ethekwini Municipality | Rand | 317 795 948 | 299 836 676 | 17 959 272 | 17 959 272 | 2015/07/01 | 2018/12/31 |
| Contract No. WP0485-WTE For the rendering of services for Design and Build service for the emergency upgrade of the Thukela Goedertrouw Scheme<br>Project carried out by CMC di Ravenna only | Department: Water and Sanitation | Rand | 602 213 795 | 327 784 158 | 274 429 637 | 274 429 637 | 2017/09/28 | 2019/07/31 |
| DCT Berth 203 to 205 Reconstruction, deepening and lenghening - Durban Port<br>Project carried out in Joint Venture as follow:<br>CMC di Ravenna 35%<br>Other JV partners 65%<br>Leading partner CMC | Transnet | Rand | 3 651 589 226 | 5 233 480 | 3 646 355 746 | 1 276 224 511 | 2018/08/02 | 2023/08/02 |
| | Total amounts | Rand | 5 857 688 993 | 1 885 490 080 | 3 972 198 913 | 1 602 067 678 | | |



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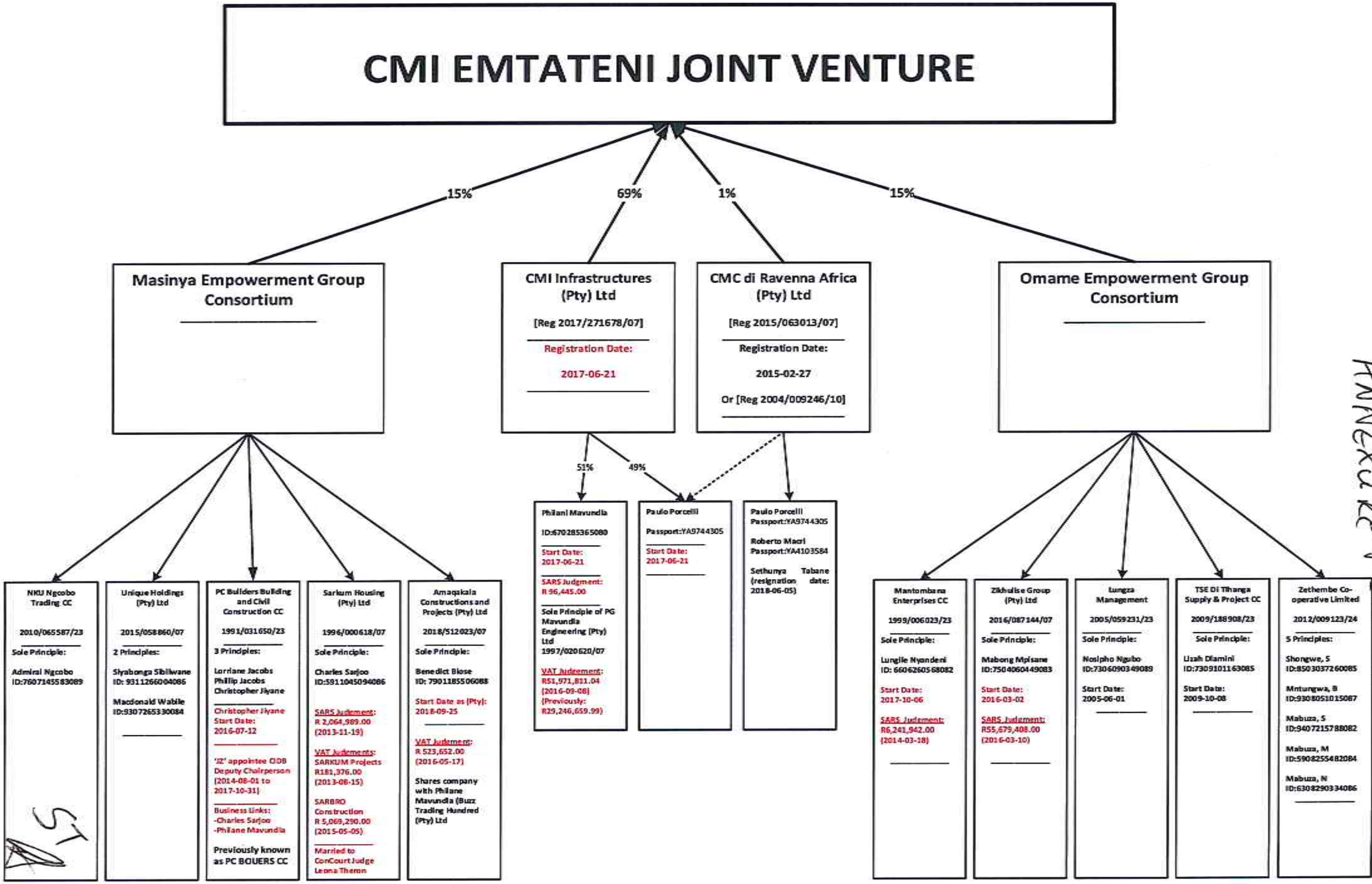
ANNEXURE POS-5

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ANNEXURE "POS-6"

SWORN STATEMENT

In support of

a Notice Beginning Business Rescue Proceedings

In respect of Cooperativa Muratori & Cementisti - C.M.C. di Revenna - Societá Cooperativa a Responsabilità Limitata (Incorporated in Ravenna, Italy)

I, the undersigned

Enrico Alicandri

do hereby make oath and say:

1. I am the Authorized Representative of Cooperativa Muratori & Cementisti - C.M.C. di Revenna - Societá Cooperativa a Responsabilità Limitata (Incorporated in Ravenna, Italy) registration number 2004/009246/10 (the Company).

2. The contents of this sworn statement are true and correct and unless stated otherwise the facts contained herein fall within my own personal knowledge and belief.

3. I make this sworn statement in support of the company's notice to commence business rescue proceedings as contemplated in section 129 of the Companies Act 71 of 2008.

4. On 14th December 2018, the directors of the company resolved that the Company be voluntarily placed into business rescue as envisaged in section 129 of the Companies Act 71 of 2008. The resolution will be filed evenly with this sworn statement.

5. (i) The company in Italy has been admitted to an arrangement with creditors in terms of the Italian Bankruptcy Law.

   (ii) Pursuant to the arrangement administrators have been appointed to administer the affairs of the company and to submit a proposal to rescue the company.

   (iii) The aforementioned application has become known to the company's creditors and debtors in South Africa. The result of this has badly affected the cash flow of the South African operation as a number of the major creditors have demanded payment and even threatened liquidation proceedings while many of the company's debtors are withholding payment.

   (iv) The result of the circumstances detailed in the preceding subparagraph is that the company is experiencing severe liquidity problems and it is therefore unlikely that the company will be able to pay its debts as they become due and payable within the immediately ensuing six months.

6. As at the 30th September 2018 the management accounts of the South African office reflect the following:

6.1 Fixed Assets totalling R [illegible] 741 542.00

6.2 Total Assets of R 2 771 486 678.00

6.3 Total liabilities R 2 151 156 865.00



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7. In the result, the assets of the South African Office exceed its total liabilities by an amount of R 620 329 813.00

8. The Company is involved in numerous major projects in Italy and internationally. These include a number of major projects in South Africa one of which is the reconstruction of the port of Durban. The latter project has a value of approximately 255 million euros.

9. Based on the above the board of directors and I are of the opinion that there is a reasonable prospect of rescuing the Company with business rescue proceedings. Business rescue proceedings will, it is hoped, allow the company to reorganize its affairs so that the Company can complete its projects and remain viable.

DEPONENT

I hereby certify that the deponent has acknowledged that he knows and understands the contents of this affirmation, which was signed and sworn before me at Johannesburg on the 22nd day of December 2018, the regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

G.A. Downs

COMMISSIONER OF OATHS

SUID-AFRIKAANSE POLISIEDIENS
DIE STASIE BEVELVOERDER
BEDFORDVIEW
2018 -12- 22
THE STATION COMMANDER
BEDFORDVIEW
SOUTH AFRICAN POLICE SERVICE

KOMMISSIE VIR [illegible] EN
INTELLEKTUELE EIENDOM
[illegible]
2019 -01- 02 No 01
BUSINESS RESCUE
COMPANIES AND INTELLECTUAL
PROPERTY COMMISSION

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Cooperativa
Muratori & Cementisti
C.M.C. di Ravenna
Società Cooperativa

p.i. / c.f. / r.i. Ra 00084780395
r. e. a. Ra 1660 - c. p. 440

**COOPERATIVA MURATORI & CEMENTISTI - CMC di RAVENNA – SOCIETA' COOPERATIVA INCORPORATED IN ITALY ("*CMC*")**

**HELD AT RAVENNA ON THE 14th DECEMBER 2018**

The undersigned Mr. Alfredo Fioretti, Chairman of the Board Of Directors Of Cooperativa Muratori & Cementisti - CMC Di Ravenna Società Cooperativa,

**WHEREAS** the Board of Directors of CMC held on 14th December 2018, have concluded after proper inquiry and investigation that:

1.1. CMC is financially distressed as is contemplated in terms of section 129(1) of the Companies Act 71 of 2008 (*"the Act"*); and

1.2. that there are reasonable prospects to rescue CMC.

DECLARES that

1. the Board resolved that:

• CMC, voluntary begins business rescue proceedings and be placed under company supervision as is envisaged in terms of chapter 6 of the Act; and

• that the board of directors mandates Mr Enrico Alicandri to sign all documents pertaining to this application and to attend to the appointment of a business rescue practitioner for CMC.

SIGNATURE

17 DEC 2018
DATE

KOMMISSIE VIR MAATSKAPPYE EN INTELLEKTUELE EIENDOM
ONDERNEMINGSREDDING
2019 -01- 02
BUSINESS RESCUE
COMPANIES AND INTELLECTUAL PROPERTY COMMISSION

Sede (Ravenna)
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cmc.cmc@cmcra.com

Ufficio (Roma)
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cmcroma@cmcra.com

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piazza Velasca 5
20122 Milano Italia
tel. +39 02 49680110
fax +39 02 49750136
cmcmilano@cmcra.com

www.cmcgruppo.com

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**AUTENTICA DI FIRMA AI SENSI DELL'ART.47 DEL D.P.R. 28 DICEMBRE 2000 N.445 E DELL'ART.76 DEL DETTO D.P.R. 445/2000**

(esente da bollo ex art. 37 del DPR 445/2000)

Certifico io sottoscritta Dr.ssa FRANCESCA PERRIS Notaio in Ravenna ed iscritta al Collegio Notarile del Distretto di Ravenna, vera ed autentica la firma del Signor:

- FIORETTI Alfredo, nato a Napoli - Italia - il 14 marzo 1974, domiciliato per la carica in Ravenna, Via Trieste n. 76, quale Presidente del Consiglio di Amministrazione e legale rappresentante della Società

**"COOPERATIVA MURATORI & CEMENTISTI - C.M.C. DI RAVENNA SOCIETA' COOPERATIVA"**

con sede in Ravenna Via Trieste n. 76, iscritta al Registro delle Imprese di Ravenna e codice fiscale: 00084280395.

Il signor FIORETTI Alfredo, da me richiamato sulle conseguenze penali in caso di dichiarazione mendaci, ai sensi dell'art.47 del D.P.R. 28 dicembre 2000 N. 445 e dell'art. 76 del detto D.P.R. N 445/2000 ha dichiarato ed attestato sotto la propria personale responsabilità quanto precedentemente dichiarato.

Si rilascia agli effetti dell'art.47 del D.P.R. 28 dicembre 2000 n.445 e dell'art.76 del detto D.P R. 445/2000.

Ravenna, Via Antonio Zirardini n. 14, l'anno duemiladiciotto, il giorno diciassette del mese di dicembre (17/12/2018)

**AUTHENTICATION OF SIGNATURE PERSUANT ART. 47 OF THE DECREE N. 445 DATED DECEMBER 28TH 2000 AND ART. 76 OF THE SAID DECREE 445/2000**

(no subject to stamp duties ex art.37 of Legislative Decree 445/200)

I, the undersigned FRANCESCA PERRIS, Notary Public in Ravenna, registered at the Notarial District of Ravenna, certify the authenticity of the signature of Mr.:

- FIORETTI Alfredo, born in Naples - Italy - on March 14th 1974, domiciled at the head office of the Company, in his capacity as Chairman of the Board of Directors and Legal Rapresentative of the Company

**"COOPERATIVA MURATORI & CEMENTISTI - C.M.C. DI RAVENNA SOCIETA' COOPERATIVA"**

having its head office in Ravenna (RA) Via Trieste n. 67, Fiscal Code and registration at the Companies' Register of Ravenna N. 00084280395.

Mr. FIORETTI Alfredo, after having been admonished by myself, Notary Public, about the penal consequences in case of mendacious declarations, in accordance with art. n. 47 of the Decree n. 445 dated December 28th, 2000 and art. n. 76 of the said Decree n. 445/2000, has declared and attested under his own responsibility what previously stated.

This certification is issued for the purposes of art. n 47 of Presidential Decree n. 445 dated december 28th, 2000 and of the art. n. 76 of the said Decree n. 445/2000.

Ravenna, Via Antonio Zirardini n. 14, the year two thousand eighteen, the day seventeenth of the month of December (17/12/2018)

2019 -01- 02

BUSINESS REG...

COMPANIES AND INTELLECTUAL PROPERTY COMMISSION

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COOPERATIVA MURATORI & CEMENTISTI - CMC di RAVENNA –

SOCIETA' COOPERATIVA INCORPORATED IN ITALY ("*CMC*")

HELD AT RAVENNA ON THE 14th DECEMBER 2018

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SIGNATURE

17 DEC 2018

DATE

KOMMISSIE VIR MAATSKAPPYE EN INTELLEKTUELE EIENDOM
ONDERNEMINGSREDDING
2019 -01- 02
BUSINESS RESCUE
COMPANIES AND INTELLECTUAL PROPERTY COMMISSION

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Ravenna, Via Antonio Zirardini n. 14, the year two thousand eighteen, the day seventeenth of the month of December (17/12/2018)

KOMMISSIE VIR MAATSKAPPYE EN INTELLEKTUELE EIENDOM
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2019 -01- 02 No 04

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