



Companies and Intellectual
Property Commission

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INSPECTOR REPORT ON

NOVA PROPGROW GROUP HOLDINGS LTD 2011/003964/06

FILE: CCDR 150/2019

INSPECTOR

CUMA ZWANE

21 October 2021

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1. Background

On 04 February 2021 the Commission, in terms of Section 22 of the Act, issued the board of directors with a CoR19.1, requesting them to provide proof that:

(i) adequate financial resources are available to meet the financial obligations due and payable in the financial year ended 28 February 2021

(ii) for the financial year ended 28 February 2022, adequate financial resources will be available to meet the financial obligations due and payable

(iii) the Debenture Holders are in agreement with the claim made in Note 17 of the annual financial statements for the financial year ended 28 February 2019.

A hard copy of the board's response was received during the first week of March 2021, through their legal representative, to which I acknowledged receipt on 08 March 2021 via email correspondence. The board's response included a copy of the audited annual financial statements for the financial year ended 28 February 2020, a copy of the Debenture Trust Deed and Scheme of Arrangements.

2. Mandate

In terms of Section 22 (3) of the Companies Act, No 71 of 2008 ("the Act") as amended, if a company to whom a notice has been issued in terms of subsection (2) fails within 20 business days to satisfy the Commission that it is not engaging in conduct prohibited by subsection (1), or that it is able to pay its debts as they become due and payable in the normal course of business, the Commission may issue a compliance notice to the company requiring it to cease carrying on its business or trading, as the case may be.

In terms of Section 171 (2) the Companies Act, No 71 of 2008 ("the Act") as amended, a compliance notice may require the person to whom it is addressed to:

(a) cease, correct or reverse any action in contravention of this Act;

- (b) take any action required by this Act;
- (c) restore assets or their value to a company or any other person;
- (d) provide a community service, in the case of a notice issued by the Commission; or
- (e) take any other steps reasonably related to the contravention and designed to rectify its effect.

3. Legislative Framework

Section 22 of the Companies Act, No. 71 of 2008 (“the Act”) as amended, and Regulation 19 of the Companies Regulations, 2011 read as follows:

Section 22. Reckless trading prohibited

(1) A company must not carry on its business recklessly, with gross negligence, with intent to defraud any person or for any fraudulent purpose.

(2) If the Commission has reasonable grounds to believe that a company is engaging in conduct prohibited by subsection (1), or is unable to pay its debts as they become due and payable in the normal course of business, the Commission may issue a notice to the company to show cause why the company should be permitted to continue carrying on its business, or to trade, as the case may be.

(3) If a company to whom a notice has been issued in terms of subsection (2) fails within 20 business days to satisfy the Commission that it is not engaging in conduct prohibited by subsection (1), or that it is able to pay its debts as they become due and payable in the normal course of business, the Commission may issue a compliance notice to the company requiring it to cease carrying on its business or trading, as the case may be.

Regulation 19: Reckless trading or trading under insolvent circumstances

(1) The Commission may issue a notice to show cause contemplated in section 22 (2) in Form CoR 19.1, which must clearly set out the grounds upon which the Commission has formed the requisite belief that the notice is justified.

(2) If a person who has received a notice in Form CoR 19.1 provides information to the Commission within 20 business days after receiving the notice, the Commission, after considering that information, must issue either-

(a) a notice in Form CoR 19.2 accepting the information, and confirming the company's right to continue carrying on its business activities; or

(b) a compliance notice, as contemplated in section 22 (3).

4. Consideration

4.1. Assessment of the board's response dated 3 March 2021

In the Form CoR 19.1 issued to the board of Nova PropGrow Group Holdings Ltd on 04 February 2021, the Commission required the board to provide proof that:

(i) adequate financial resources are available to meet the financial obligations due and payable in the financial year ended 28 February 2021

This has been addressed. The expiry of the financial year in question makes the matter resolved, notwithstanding the fact that cash receipts from customers [REDACTED] were insufficient to cover both operational expenses and the repayment of borrowings [REDACTED] and finance costs [REDACTED] which were supplemented by proceeds from the disposal of investment property [REDACTED]

(ii) for the financial year ended 28 February 2022, adequate financial resources will be available to meet the financial obligations due and payable

- The board of directors did not adequately address this. An operating cash budget for the period 1 March 2021 to 28 February 2022 was appended to the annual financial statements for the financial year ended 28 February 2020. Without the approved audited annual financial statements for the financial year ended 28 February 2021, the operating cash budget could not be relied upon.

- Based on the Commission's interpretation of the Schemes of Arrangement and the Debenture Trust Deed, there remains an expectation, subject to the Debenture Trustee's approval (per point (iii) below), that the debentures should be classified as a short-term liability in the audited annual financial statements for the financial year ended 28 February 2021. [REDACTED]
[REDACTED]
statements for the financial year ended 28 February 2021 due and payable within the twelve months ending 28 February 2022. In this light, the board must still prove to the Commission that the company has and will have the sufficient/adequate liquid resources to settle all debts as they become due and payable in the ordinary course of business for the financial year ending 28 February 2022.

As such, this matter remains unresolved. Refer to part 4.2 below.

(iii) the Debenture Holders are in agreement with the claim made in Note 17 of the annual financial statements for the financial year ended 28 February 2019

The response from the board of directors does not adequately address this. Only an inference was posited that the Debenture Holders are in agreement to the assertion made in Note 17 of the annual financial statements for the financial year ended 28 February 2019.

It should also be noted, as stated in the Directors' report of the audited annual financial statements for the financial year ended 28 February 2019, that the Debenture Trustee resigned during the course of the financial year. As such, Debenture Holders have no representation in the company and are unable to or have limited capacity to exercise their rights as outlined in the Debenture Trust Deed.

4.2. Salient Matters in Financial Reporting

In terms of IFRS, when consolidated annual financial statements are prepared, they should provide information about assets, liabilities, equity, income and expenses of both the parent and its subsidiaries as a single reporting entity. As such, reference to Nova

Propprow Group Holdings Ltd as “the company” includes all companies over which it is a parent, together with those companies’ assets, liabilities, equity, income and expenses.

A time-series analysis of the notes to the financial statements reveals inconsistencies to conditions of debenture repayments terms and thus varying positions of the company’s actual financial obligations. Below is a tabulated view of the extract of the notes pertaining to the obligation of liability to Debenture Holders:

Financial year-end	Note	Verbatim Extract of a portion of the Note (italicized part for emphasis purposes)
28 Feb. 2014	18	The debentures are payable in terms of the Schemes of Arrangement, in varying portions of the aggregate, within a period of 10 years starting from the date of sanctioning of the Schemes of Arrangement on 20 January 2012. <i>This period/s may be extended in the discretion of the board of directors.</i>
28 Feb 2015	15	The debentures are payable in terms of the Schemes of Arrangement, in varying portions of the aggregate, within a period of 10 years starting from the date of sanctioning of the Schemes of Arrangement on 20 January 2012. <i>This period/s may be extended in the discretion of the board of directors.</i>
29 Feb 2016	16	The debentures are payable in terms of the Schemes of Arrangement, in varying portions of the aggregate, within a period of 10 years starting from the date of sanctioning of the Schemes of Arrangement on 20 January 2012. <i>This period/s may be extended in the discretion of the board of directors.</i>
28 Feb 2017	16	The debentures are payable in terms of the Schemes of Arrangement, in varying portions of the aggregate, within a period of 10 years starting from the date of

		sanctioning of the Schemes of Arrangement on 20 January 2012.
28 Feb 2018	17	The debentures are payable in terms of the Schemes of Arrangement, in varying portions of the aggregate, within a period of 10 years starting from the date of sanctioning of the Schemes of Arrangement on 20 January 2012.
28 Feb 2019	17	The debentures are payable in terms of the Schemes of Arrangement, in varying portions of the aggregate, within a period of 10 years starting from the date of sanctioning of the Schemes of Arrangement on 20 January 2012, <i>or any date on which the company elects to repay post this period, as contemplated by the Schemes of Arrangement.</i>
28 February 2020		The debentures are payable in terms of the Schemes of Arrangement, in varying portions of the aggregate, within a period of 10 years starting from the date of sanctioning of the Schemes of Arrangement on 20 January 2012, <i>or any date on which the company elects to repay post this period, as contemplated by the Schemes of Arrangement.</i>

The above analysis reveals discrepancies in the conditions tied to the Debentures. The notes to the audited annual financial statements for the financial years ended 28 February 2017 and 28 February 2018 do not make mention of the assertion that the repayment period may be extended in the discretion of the board of directors or that it may be postponed to any date on which the company elects to repay post the 10-year period, as contemplated by the Schemes of Arrangement, while all the other Notes (for financial years ended 28 Feb. 2014, 28 Feb. 2015, 29 Feb. 2016, 28 Feb. 2018 and 28 Feb. 2019) state that the repayment period/s may be extended in the discretion of the board of directors or postponed to any date on which the company elects to repay post the 10-year period, as contemplated by the Schemes of Arrangement.

When the above Notes to the audited annual financial statements are read in conjunction with the Schemes of Arrangement and Debenture Trust Deed, the following concern surfaces:

In terms of Clause 6.1 of the Debenture Trust Deed, “the debentures shall become repayable in full at the election of the company together with the receivers approval within a period of 1 (ONE) to 10 (TEN) years from the effective date”. Furthermore, in terms of Clause 6.3.1, 6.3.1.1 and 6.3.1.2 of the Debenture Trust Deed, *All or some of the debentures shall be redeemable, either in whole or in part, at the written instance of the company, with the written approval of the receivers and the trustee notwithstanding the date on which any of the debentures are issued before*

6.3.1.1 the 10th (TENTH) anniversary of the election date by the company with the receivers approval in respect of such redemption; or

6.3.1.2 any date on which the company elects with the receivers and the trustee’s written approval to redeem some or all of the debentures

There is no express provision in neither the Schemes of Arrangement nor the Debenture Trust Deed that gives the directors the exclusive discretion to postpone the repayment period *without* the receivers and the trustee’s written approval. By omitting the latter part about the approval of the receiver and trustee, the Notes give the impression that the directors can unilaterally postpone the repayment date. In terms of faithful representation, the manner in which the Notes were disclosed distort the cashflow implications of the company’s financial obligations. Section 29 (1),(2) and (3) of the Companies Act, 71 of 2008 (as amended), reads:

(1) If a company provides any financial statements, including any annual financial statements, to any person for any reason, those statements must:

(a) satisfy the financial reporting standards as to form and content, if any such standards are prescribed;

(b) present fairly the state of affairs and business of the company, and explain the transactions and financial position of the business of the company;

(c) show the company's assets, liabilities and equity, as well as its income and expenses, and any other prescribed information;

(d) set out the date on which the statements were published, and the accounting period to which the statements apply; and

(e) bear, on the first page of the statements, a prominent notice indicating;

(i) whether the statements;

(aa) have been audited in compliance with any applicable requirements of this Act;

(bb) if not audited, have been independently reviewed in compliance with any applicable requirements of this Act; or

(cc) have not been audited or independently reviewed; and

(ii) the name, and professional designation, if any, of the individual who prepared, or supervised the preparation of, those statements.

(2) Any financial statements prepared by a company, including any annual financial statements of a company as contemplated in section 30, must not be:

(a) false or misleading in any material respect; or

(b) incomplete in any material particular, subject only to subsection (3).

(3) A company may provide any person with a summary of any particular financial statements, but:

(a) any such summary must comply with any prescribed requirements; and

(b) the first page of the summary must bear a prominent notice;

(i) stating that it is a summary of particular financial statements prepared by the company, and setting out the date of those statements;

(ii) stating whether the financial statements that it summarises have been audited, independently reviewed, or are unaudited, as contemplated in subsection (1)(e);

(iii) stating the name, and professional designation, if any, of the individual who prepared, or supervised the preparation of, the financial statements that it summarises; and

(iv) setting out the steps required to obtain a copy of the financial statements that it summarises.

From the above provision of the Act, the omission of the fact that there must be written approval from the receiver and the trustee for any postponement of the repayment date to be valid constitutes incompleteness of material information and potentially misleading or misrepresentation of information that may have a gross impact on decisions of users of Nova Propgrow Group Holdings' annual financial statements.

5. Conclusion

Based on the merits and substance of the response received by the Nova Propgrow Group Holdings Ltd board of directors, dated 3 March 2021, reasonable grounds still exist that the company may be in contravention of Sections 22 and 29 of the Act.

It is proposed that opportunity be given to the company, through the issuing of a compliance notice, to prove beyond reasonable doubt that it has and will have adequate/sufficient liquidity to meet its current financial obligations; including the outstanding debentures which, according to the Commission, as informed by the International Financial Reporting Standards framework used in preparing the audited annual financial statements of Nova Propgrow Group Holdings Ltd; are due and payable within the twelve months ending 28 February 2022).

Upon receipt and analysis of the response, a final verdict will be made in keeping with the requirement prescribed in Section 22(3) of the Companies Act, 71 of 2008 (as amended)

A compliance notice for your consideration is attached as Annexure "B" to provide the entity the opportunity to adequately comply with Section 22 of the Companies Act, 71 of 2008 (as amended).

As at the date of this report, our records shows or indicate that the enterprise status of Nova Propgrow Group Holdings Ltd is "*in business*" and in order for the company to comply with the requirements of the Act.

6. Recommendation

It is recommended that the Commissioner approve and sign the compliance notice attached as Annexure “B” in terms of which the company is required to, within 40 business days from the date of the Notice:

- i. **Submit to the Commission a signed resolution of the Board’s intention to ‘exit the Debentures’ in order to substantiate the statement made in the Communique to the public, titled *Communique – Nova Group Update* and dated 9 April 2021**
- ii. **Submit a copy of the approved audited annual financial statements for the financial year ended 28 February 2021 for the Commission to make an evaluation of the company’s current liabilities for the 12 months ending 28 February 2022 so as to negate the allegation of potential insolvency or financial distress**
- iii. **Submit to the Commission, written and signed approval from the Debenture Trustee or his\her proxy (or equivalent), that the Nova Board of Director’s *may* postpone the payment of Debentures, beyond the projected 10-year Scheme of Arrangement period; subject to the board still maintaining the view that it has the discretion to postpone the payment of Debentures beyond the projected 10-year Schemes of Arrangement period**
- iv. **Subject to the inability to fulfil point (iii) above, substantive proof that the company has and will have sufficient liquid assets that can and or have been realised into cash and cash equivalents to allow the company to meet its current liabilities for and before the end of the financial year ending 28 February 2022.**

It is also recommended that the directors of the entity be given a copy of this report as per the requirement in Section 170(2)(b) of the Act.



CUMA A. ZWANE
Appointed Inspector

Date: 21.10.2021