

**From:** Diaan Ellis

**Sent:** Wednesday, 03 March 2021 15:38

**To:** 'CZwane@cipc.gov.za' <CZwane@cipc.gov.za>

**Cc:** 'JMathekga@cipc.gov.za' <JMathekga@cipc.gov.za>; Connie Myburgh <[REDACTED]>; [REDACTED]

**Subject:** Nova PropGrow Group Holdings Ltd ("the company") - Notice in terms of Section 22(2) of the Companies Act, 2008 ("the Act")

Dear Mr Zwane

1. I act for the company ("my client").
2. You will recall that on 4 February 2021, you sent to my client a Notice in terms of Section 22(2) of the Act.
3. The email and the attachments hereto, constitute my client's response to the aforementioned notice, as envisaged by section 23 of the Act.
4. By way of explanation the annexures comprise the following:
  - a. My covering letter of today's date;
  - b. A formal response document;
  - c. Annexures to the response document marked "R1" to "R3".
5. Please note that annexure "R1" consists of two parts. The first part is the Debenture Trust deed and all annexures save for annexure "A". The second part is annexure "A".
6. Please be so good as to acknowledge receipt hereof.

Sincerely

Diaan Ellis

**FABER GOERTZ ELLIS AUSTEN INC**



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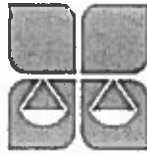
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Our reference: Diaan Ellis/NOV1/0011

Your reference:

Date: 3 March 2021

**THE COMPANIES AND INTELLECTUAL  
PROPERTY COMMISSION  
PRETORIA**

**ATT: MR CUMA ZWANE**

**BY EMAIL: [Czwane@cipc.co.za](mailto:Czwane@cipc.co.za)**

Dear Sirs

**RE: NOVA PROPGROW GROUP HOLDINGS LTD – NOTICE IN TERMS OF SECTION 22(2)  
OF THE COMPANIES ACT, 2008**

1. We act for Nova PropGrow Group Holdings Limited ("PropGrow"), Nova Property Group Investments (Proprietary) Limited ("Investments") and their subsidiaries ("Nova") ("our client").
2. We have been instructed with a Notice issued by the CIPC on 4 February 2021, in terms of the provisions of Section 22(2) of the Companies Act of 2008 ("the Act") ("the Notice"). The Notice is addressed to PropGrow.
3. The Notice was delivered pursuant to an exchange of correspondence between our client and you ("the CIPC") during the course of 2020.
4. Propgrow, being of the view that it is not in contravention of the provisions of Section 22(1) or 22(2) of the Act, has prepared a written response to the Notice, as envisaged by Section 22(3) of the Act ("our client's Response").
5. A copy of our client's Response is attached.
6. Whilst our client is hopeful that you may be persuaded of the correctness of our client's Response, our client is mindful that you might not be. This would result in a dispute between the CIPC and our client, which would need to be resolved in an orderly fashion and in such a way that our client's trading operations are not disrupted to the prejudice of stakeholders, including debenture holders, who would stand to suffer the greatest

prejudice if the CIPC were, without further reference to our client, to issue a Compliance Notice as contemplated by Section 22 (3) ("the Compliance Notice").

7. In the circumstances we would propose the following:
    - 7.1. The CIPC is afforded a period of time to consider our client's response and revert with its position as to whether or not, in the CIPC's view, our client is in contravention of Section 22. We would propose that a 7-day period would be sufficient, but if the CIPC requires more time you will undoubtedly advise of the time period that you require;
    - 7.2. In the event that the CIPC, notwithstanding our client's response, maintains that:
      - 7.2.1. The Notice was validly issued; and/or
      - 7.2.2. Our client's Response does not adequately deal with the Notice; and/or
      - 7.2.3. Debenture holders must be paid by January 2022 and that our client's Response does not properly address this view;

And, after the expiry of the time period in 7.1, reverts with its views in the foregoing regard this would then create a dispute between our client and the CIPC which needs to be resolved ("the dispute declaration");

  - 7.3. Following the dispute declaration, our client then be afforded a period of 30 days from the date of the CIPC's response, to institute appropriate proceedings in the High Court of South Africa for declaratory or such other relief aimed at resolving the dispute ("the High Court proceedings");
  - 7.4. Upon the timeous delivery of the High Court proceedings, as foreshadowed in 7.3 above, the CIPC then undertakes not to issue our client with a Compliance Notice, pending the outcome of the High Court proceedings.
8. We trust that you will agree with us that it is appropriate that, in the event that our client and the CIPC are unable to iron out their differences, an orderly dispute resolution process, as foreshadowed above, be embarked upon. Our client is however concerned about the possibility that you may elect, as a reaction to this letter, and instead of responding thereto on the basis as suggested, take the drastic step of issuing a Compliance Notice without further reference to our client.
  9. Were you to take the foregoing drastic step, the financial harm that our client would suffer, both from a reputational perspective and from an inability to trade, would be devastating and irrevocable and would cause immeasurable harm to debenture holders.
  10. Our client needs to guard against the possibility that you might take such a drastic step and in the circumstances you are hereby called upon to let us have your written confirmation, within 7 days of receipt hereof, that you will not, pending the finalisation of our engagements and, if necessary, the finalisation of the High Court proceedings foreshadowed in paragraph 7.3 above, take the further step of issuing a Compliance Notice.

11. Should we not receive your written confirmation, as aforesaid, our client will have no option but to launch an urgent application to the High Court, to interdict you from issuing a Compliance Notice pending the finalisation of the High Court proceedings, which our client will then also initiate shortly thereafter.
12. We trust however that the foregoing drastic step will not be necessary and that you will confirm, by return letter, that you will not issue a Compliance Notice pending the finalisation of our debates on the way forward.
13. We await your earliest response to the issues raised herein.

Yours faithfully

FABER GOERTZ ELLIS AUSTEN INC

  
PER: DIAAN ELLIS

**IN THE COMPANIES AND INTELLECTUAL PROPERTY COMMISSION,  
REPUBLIC OF SOUTH AFRICA**

Concerning:

**NOVA PROPGROW GROUP HOLDINGS LTD**

*"The Company"*

**(Reg No: 2011/003964/06)**

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**RESPONSE TO SECTION 22(2) NOTICE**

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**CONTENTS**

<b>INTRODUCTION .....</b>	<b>2</b>
<b>THE TARGET OF THE NOTICE .....</b>	<b>6</b>
<b>DUE DATE FOR REDEMPTION OF DEBENTURES .....</b>	<b>7</b>
<b>RECKLESS TRADING, GROSS NEGLIGENCE AND FRAUD .....</b>	<b>9</b>
<b>The Annual Financial Statements for the Year ending February 2020 .....</b>	<b>11</b>
<b>Qualifications to the 2019 Annual Financial Statements .....</b>	<b>11</b>
<b>Note 17: Debentures .....</b>	<b>12</b>
The Company's Interpretation is Bona Fide.....	14
The Extent of the Liability to Debenture Holders .....	15
<b>Debenture Holders May Not Be In Agreement With The Claim Made In Note     17 Of The Annual Financial Statements .....</b>	<b>16</b>
<b>ABILITY TO PAY ITS DEBTS .....</b>	<b>17</b>
<b>MORE REASONS WHY THE COMPANY SHOULD CONTINUE TRADING ....</b>	<b>20</b>
<b>CONCLUSION.....</b>	<b>21</b>

## INTRODUCTION

1. On 4 February 2021, the Company received a notice from the Companies and Intellectual Property Commission ("the CIPC"), issued in terms of section 22(2) of the Companies Act 71 of 2008 ("the Act") calling upon the Company to show cause why it should be permitted to carry on business or to trade ("the Notice").
2. The Notice states that the CIPC has grounds to believe that the Company may be carrying on its business recklessly, with gross negligence, with intent to defraud a person, or for a fraudulent purpose, or that it is unable to pay its debts as they become due in the ordinary course of business.
3. The grounds upon which the Notice is based are as expressed as follows:

*"As at 31 January 2021, the Commission had not yet received the annual financial statements for the financial year ended 28 February 2020, to determine if the company's financial position and performance had changed in order to invalidate the qualified opinion tabled by the external auditor in the annual financial statements for the financial year ended 28 February 2019. Moreover, the notes to the annual financial statements for the financial year ended 28 February 2019 indicate that the company has the option to elect to repay debentures post the period (10 years from 20 January 2012) specified in the Scheme of Arrangements. The Commission is of a different view in light of the contents of the Debenture Trust Deed, in that it believes the Debentures*

*must be settled by no later than 20 January 2022. As such, the burden of proof lies with the company to prove to the Commission 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."*

4. It is unclear from the notice whether the CIPC believes that the Company is engaging in conduct prohibited by sub-section (1) of section 22 of the Act, or whether it believes that the Company is unable to pay its debts as they become due and payable in the normal course of business, as envisaged by sub-section (2) or both.
5. To the extent that the CIPC is of the view that the Company is carrying on its business recklessly, with gross negligence, with intent to defraud a person, or for a fraudulent purpose, it will be demonstrated that the expressed facts upon which the CIPC relies as underpinning the Notice, do not sustain such a conclusion.



6. To the extent that it is contended that the Company is unable to pay its debts as they become due and payable in the normal course of business, it will be demonstrated the Company is both factually and commercially solvent and is accordingly able to pay its debts.
7. The Company denies that it is or has been carrying on its business recklessly, with gross negligence, with intent to defraud a person, or for a fraudulent purpose, or that it is unable to pay its debts as they become due in the ordinary course of business.
8. The Company sets out hereunder its various responses to the Notice, which address the following:
  - 8.1 the stated grounds relied upon for issuing the Notice do not arise from the activities of the Company but from a different entity within the Group of companies to which the Company belongs ("the Nova Group"), namely, Nova Property Group Investments (Pty) Ltd ("Nova Investments") and that no section 22(2) Notice has been served on Nova Investments;
  - 8.2 the Notice does not disclose any conduct which may be construed as reckless, grossly negligent, fraudulent or reflecting an intent to defraud any person;
  - 8.3 on a proper interpretation of the debenture trust deed ("the Trust Deed"), Nova Investments is entitled, with the written approval of the

Receivers and the Trustee, to elect to redeem the debentures on a date later than 20 January 2022;

8.4 the amounts payable to debenture holders can never have any meaningful adverse impact on the ability of the Company, Nova Investments or the Nova Group to pay their debts as and when they become due because of the manner in which the redemption values of the debentures is to be ascertained;

8.5 even if it is assumed that the debentures are to be redeemed by 20 January 2022:

8.5.1 the Company is factually solvent, despite the recognition of this liability, inasmuch as its assets, fairly valued, exceed its liabilities, fairly valued; and

8.5.2 this future liability cannot reasonably be taken into account for purposes of determining whether the Company is presently able to pay its debt as and when they become due;

8.5.3 the Company is nonetheless able to pay debenture holders and, indeed, all of its debts, as and when they become due;

8.6 there is good cause why the Company should be permitted to continue carrying on its business.

## THE TARGET OF THE NOTICE

9. The Notice is directed at the Company.
10. The Notice is premised upon the contention that "... *the notes to the annual financial statements for the financial year ended 28 February 2019 indicate that ~~the company~~ has the option to elect to repay debentures post the period (10 years from 20 January 2012) specified in the Scheme of Arrangements.*
11. In fact, in terms of the Trust Deed, it is not the Company but a subsidiary company, Nova Investments, who bears the obligation to "... *pay to the debenture holders or to the trustee on behalf of and in trust for such holders, the respective sums which, at [Nova Investments'] option, shall become due to such debenture holders for capital and the EBDTA on the debentures in terms of this deed..*"<sup>1</sup>
12. A copy of the Trust Deed pertaining to one of the schemes of arrangement is annexed hereto marked "R1". There are four separate schemes of arrangement each with its own trust deed. The four deeds, apart from certain minor differences in relation to the annexures, read identically and the remaining three, whilst not attached to avoid prolixity, are available on request.

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<sup>1</sup> See definition of company in clause 1.3.2, read with clauses 4 and 6

13. The Company will nonetheless demonstrate that it has not engaged in any conduct prohibited by subsection (1) and that it is able to pay its debts as they become due and payable in the normal course of business.

#### **DUE DATE FOR REDEMPTION OF DEBENTURES**

14. The due date for redemption of debentures is governed by the Trust Deed (annexure "R1" hereto).
15. The following clauses of the Trust Deed are relevant (emphasis added):

#### *"4 OBLIGATION TO PAY CAPITAL*

*The company binds itself to pay to the debenture holders or to the trustee on behalf of and in trust for such holders, the respective sums which, **at the company's option**, shall become due to such debenture holders for capital and the EBDTA on the debentures in terms of this deed.*

#### *6 REDEMPTION*

...

*6.3 Subject to clause 8.4 below, the debentures shall be redeemable as follows:*

*6.3.1 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; or.."**

16. The election date referred to in clause 6.3.1.1 of the Trust Deed is not defined and is not discernible from a reading of the balance of the Trust Deed. The operative provision for present purposes, however, is clause 6.3.1.2 which makes it clear that the date for redemption is such date as Nova Investments may elect, with the receiver's and trustees written approval.
17. Therefore, the underlying premise of the Notice, namely that the debentures are redeemable by 20 January 2022, is not correct.
18. It is noted that the CIPC has stated that it is "of a different view". It is submitted that, whatever conflicting views are taken by the respective parties, the view held by the Company is held *bona fide* and the mere fact that the CIPC has reached a different legal conclusion should not inform a decision to issue a compliance notice to the company requiring it to cease carrying on its business or trading, as the case may be (a "Compliance Notice").

19. Based on the foregoing, it is submitted that the Company (in fact, Nova Investments) has the option to elect to repay debentures after 20 January 2022.
20. For purposes of this response, however, it will be demonstrated that, even if the debentures are payable by 20 January 2022, the Company (in fact Nova Investments) is nonetheless able to pay debenture holders and, indeed, all of its debts, as and when they become due.

### **RECKLESS TRADING, GROSS NEGLIGENCE AND FRAUD**

21. I am advised that acting "recklessly" consists in an entire failure to give consideration to the consequences of one's actions, in other words, an attitude of reckless disregard of such consequences.
22. Recklessness may consist of blameworthy conduct characterised by a failure to take any due care in the management of a company that results in detriment to the company and others and exhibits a high degree of disregard for the standards observed by honest and diligent men of affairs. Gross negligence is similar in nature.
23. Fraud connotes an intentional misrepresentation of fact.
24. As previously stated, the Notice does not make it clear whether the CIPC contends that it has reason to believe that the Company is trading recklessly, with gross negligence, with intent to defraud any person or for any fraudulent purpose.

25. If that is the case, then the only grounds for this contention which are disclosed are that:
- 25.1 as at 31 January 2021, the Commission had not yet received the annual financial statements for the financial year ended 28 February 2020 ("the 2020 AFS");
  - 25.2 the Company's annual financial statements for the financial year ended 28 February 2019 ("the 2019 AFS") contained a qualified opinion tabled by the external auditor;
  - 25.3 the 2019 AFS of the Company reflect the Company's view that it has the option to elect to repay debentures after 20 January 2022;
  - 25.4 the Company may not be able to meet its financial obligations which fall due on 28 February 2021 and 28 February 2022; and
  - 25.5 Debenture Holders may not be in agreement with the claim made in Note 17 of the 2019 AFS.
26. These grounds, even if assumed against the Company, do not sustain the conclusion that the Company has traded recklessly, with gross negligence, fraudulently or with the intent to defraud.

## **THE 2020 AFS**

27. Attached hereto marked "R2", is a copy of the Company's 2020 AFS. It is to be noted that the 2020 AFS, whilst recently published, relate to the Company's position as it stood as at 28 February 2020 and the Company has remained solvent and has continued to trade for the ensuing 12 months.
28. The 2020 AFS reflect, *inter alia*, that for the financial year ending 28 February 2020:
- 28.1 the Company had a surplus of assets over liabilities;
  - 28.2 the Company had a surplus of income over expenditure.
29. Although the Company failed to approve the financial statements within 6 months of the financial year end, this has been remedied and the default has been reported to the Independent Regulatory Board for Auditors. It is submitted that this failure cannot equate to trading recklessly, with gross negligence, fraudulently or with the intent to defraud.

## **QUALIFICATIONS TO THE 2019 AFS**

30. The auditor's report to the 2019 AFS referred to a material uncertainty in relation to the Company's ability operate as a going concern for the year going forward. The content of the 2020 AFS demonstrates that the auditors concerns, as expressed in the 2019 AFS, proved to be without merit and that the Nova Group, during the financial year ending 28 February 2020 not only managed to



trade in solvent circumstances, but generated a profit of R1.9 million (increased to R21.4 million having regard to certain adjustments).

#### **NOTE 17: DEBENTURES**

31. Note 17 to the 2020 AFS (annexure "R2" hereto) states as follows:

*"Debentures were issued in 2012 by the company, Nova Property Group Investments Proprietary Limited ("the company") in terms of Schemes of Arrangement whereby the historical group of companies' affairs were restructured. The company obtained 100% interest in the subsidiaries of the group of companies and in exchange issued exchangeable debentures to scheme shareholders (the historical shareholders of the restructured companies). The value of the debentures are to be determined with reference to the fair market values of the assets of the relevant subsidiary companies ("Nova Investments subsidiaries"), from time to time, but limited to the lesser of relevant fair market values and original syndication values, original syndication values aggregating an amount of [REDACTED]. 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, or any date on which the company elects to repay post this period, as contemplated by the Schemes of Arrangement. Investment returns on debentures are payable at the discretion of the board of directors of the company taking into account relevant determining factors in terms of the Schemes of Arrangement.*

*Assumptions applied in determining the fair value of debentures*

*Where the fair value of the relevant subsidiary's investment and development property was the greater between the fair value of the relevant subsidiary's investment and development property and the syndication value, discounted syndication values were used to determine the fair value of the specific class of debenture. Refer to the table on page 47 indicating the current floating rates, discounted rates and periods used. Where the table indicates "n/a", the fair value of the relevant subsidiary's investment and development property was used to determine the fair value of the specific class of debenture. This is due to the fact that the fair value of the relevant subsidiary's investment and development property was the lesser between the fair value of the investment and development property and the syndication value. Refer to note 3 which note discloses investment property assumptions per the relevant subsidiary and note 10 for assumptions used to determine the fair values of the development properties.*

*Debentures have been categorised as a Level 3 and there have been no significant transfers made between Level 1, 2 or 3 during the year under review."*

32. There are two aspects to this note which are worthy of mention:-

- 32.1 it reflects the view of the board of directors that the Company (in fact, Nova Investments) has the option to elect to repay debentures after 20 January 2022; and
- 32.2 it sets out the basis for determining the extent of the liability to debenture holders.
33. As appears from the Statement of Financial Position at page 18 of the 2020 AFS the value of the property portfolio owned by the Nova Group is [REDACTED]. This value is commensurate with the extent of the totality of the liability to the various classes of debenture holders as is also reflected at page 18 of the Statement of Financial Position (referencing note 17).
34. Note 17 shows the breakdown of the liabilities to the various debenture holders which makes up the total of [REDACTED]

#### **THE COMPANY'S INTERPRETATION IS BONA FIDE**

35. The Company's view that debentures may be repaid after 20 January 2022 is held *bona fide*, based on the provisions of the Trust Deed and the Schemes of Arrangement, as alluded to in paragraphs 10 to 16 above.
36. It is appreciated that the CIPC holds a different view but this is essentially a matter of differing legal opinion. Even if the Company's view in regard to the due date for repayment of debentures is found to be incorrect, its view is

nonetheless held *bona fide* and should not be conflated with recklessness, gross negligence or fraud.

#### **THE EXTENT OF THE LIABILITY TO DEBENTURE HOLDERS**

37. The value of the debentures is to be determined with reference to the fair market values of the assets of the relevant subsidiary companies, from time to time, but limited to the lesser of the relevant fair market values and the original syndication values.
38. Therefore, the liability to debenture holders cannot be greater than the market values of the assets of the relevant subsidiary companies and the Statement of Financial Position in the 2020 AFS show that as at 28 February 2020, the liability to debenture holders equalled the value of the Nova Group's properties, such value being in an amount of just over [REDACTED].
39. In consequence, in the event that the liability to pay debenture holders arises, the properties may at any stage be readily realised for the benefit of the debenture holders and the liability will be adjusted based on the value obtained for such realised properties.
40. In essence, therefore, the Company will always be able to pay the debts owed to debenture holders, whenever they might become due.

**DEBENTURE HOLDERS MAY NOT BE IN AGREEMENT WITH THE CLAIM MADE  
IN NOTE 17 OF THE 2019 AFS**

41. The Company obviously cannot speak for each of the individual debenture holders and is not in a position to speculate on whatever their subjective understanding of the terms of the debentures may be.
42. In the circumstances, the CIPC's allegation that the Company bears the onus of proving that "*... 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..*"; is with respect, not correct.
43. No such onus is borne by the Company because the debenture holders' individual subjective understanding is, with respect, not relevant.
44. The terms of the debentures are objectively ascertainable. Those terms prevail whether the individual debenture holders understand that to be the case or not.
45. There can, with respect, be no obligation on the part of the Company to reach agreement with each individual debenture holder where the terms of the Trust Deed, as read with the Schemes of Arrangement, speak for themselves and in circumstances where the Schemes of Arrangement, which incorporated the Trust Deed by reference, were voted upon and approved by investors (now debenture holders) prior to the Schemes of Arrangement being sanctioned by order of the High Court.

46. It can, however, be noted that:
- 46.1 The Company's position in regard to the date of repayment of debentures has been articulated in the Company's Annual Financial Statements every year since 2012, being the first set prepared and published;
- 46.2 None of the debenture holders has challenged the Company's understanding of the position.
47. It may therefore reasonably be inferred that the debenture holders are in agreement with the claim made in Note 17 of the 2019 AFS.

#### **ABILITY TO PAY ITS DEBTS**

48. I am advised that the requirement of a company to pay its debts is in respect of commercial and not factual insolvency.
49. I am further advised that commercial solvency is not something to be measured at a single point in time by asking whether all debts that are due up to that day have been or are going to be paid. The test is whether the company is able to meet its current liabilities, including contingent and prospective liabilities as they come due. Put slightly differently, it is whether the company has liquid assets or readily realisable assets available to meet its liabilities as they fall due to be met in the ordinary course of business and thereafter to be in a position to carry

on normal trading — in other words, can the company meet current demands on it and remain buoyant?

50. Determining commercial insolvency requires an examination of the financial position of the company at present and in the immediate future to determine whether it will be able, in the ordinary course to pay its debts, existing as well as contingent and prospective, and continue trading.
51. The Company's most recent annual financial statements are its 2020 AFS for the year ending February 2020. They are annexed marked "R2".
52. In terms of section 30 of the Act, the deadline for the Company to prepare its annual financial statements in respect of the year ending February 2021, will expire at the end of August 2021.
53. The 2020 AFS reflect that:
  - 53.1 the Company had a surplus of current and non-current assets over current and non-current liabilities;<sup>2</sup>
  - 53.2 the Company had a surplus of income over expenditure.
  - 53.3 The Nova Group achieved a profit of [REDACTED]

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<sup>2</sup> Notwithstanding that the Companies and Intellectual Property Commission Guidance Note of 23 June 2015: Application of Section 22, Companies Act 71 of 2008 on Close Corporations provides that an excess of liabilities over assets will not necessarily constitute an inability to pay debts

- 53.4 the value of the assets of the relevant subsidiary companies (being the value of the properties owned by the subsidiary companies) is recorded in an amount of [REDACTED]
- 53.5 as against the value of the properties a liability in respect of debenture holders is recorded at an amount of [REDACTED] the value of the debentures, having been determined with reference to the fair market values of the properties as at 28 February 2020, but limited to the lesser of the relevant fair market values and the original syndication values.
54. I reiterate that the liability to debenture holders cannot be greater than the market values of the properties of the relevant subsidiary companies. In consequence, in the event that the liability to pay debenture holders arises, the properties may at any stage be realised for the benefit of the debenture holders and the liability will be adjusted based on the value obtained for such realised properties.
55. On any construction, the 2020 AFS reflect that the Company is able to pay its debts as they become due and payable in the normal course of business.
56. Finally, in the absence of more recent financial statements, I attach hereto marked "R3", a copy of the Company's management accounts for the period March 2020 to January 2021, comprised of:



- 56.1 a statement of profit and loss for the period March 2020 to January 2021; and
  - 56.2 The Nova Group's "OPEX NPG Condensed schedule" which details the Nova Group's projected cash flows for the period March 2021 to Feb 2022.
57. These accounts, similarly, reflect that the Company is able to pay its debts as they become due and payable in the normal course of business.

#### **MORE REASONS WHY THE COMPANY SHOULD CONTINUE TRADING**

58. Although the Company's assets, fairly valued, exceed its liabilities, fairly valued, the COVID-19 pandemic and concomitant government interventions have affected economic activity and the group's business in various significant ways. The national lockdown announced on 23 March 2020, the extension of the lockdown announced on 9 April 2020 as well as the announcement of the different levels of the staged lockdown exit, has resulted in various tenants not being able to trade with some tenants closing their shops indefinitely and consequently giving rise to a reduction of rentals, a difficulty in collection of rentals and an increase in arrear rentals. The foregoing circumstances have, additionally, resulted in various development projects coming to a standstill, with limited or no service availability from Municipal and Government Institutions, construction companies and banking institutions. This has led to a downturn in the market.

59. If the Company is forced to cease trading, it will have no alternative but to realise assets at a time when market conditions are not conducive to property sales. Although this will have no impact on the Company's ability to pay debenture holders (as the value of the debentures are to be determined with reference to the fair market values of the properties of the relevant subsidiary companies) it would nonetheless lead to considerable value destruction for shareholders and debenture holders as it would significantly decrease the value of their investments.
60. In such event, the adverse impact on all stakeholders concerned, including some 20 000 debenture holders and 40 employees of the Nova Group, will be significant.

## **CONCLUSION**

61. On the facts set out above there is no reason for the CIPC to adopt the position that the Company ought to cease trading.
62. The Company denies that it is or has been carrying on its business recklessly, with gross negligence, with intent to defraud a person, or for a fraudulent purpose, or that it is unable to pay its debts as they become due in the ordinary course of business.

Dated at Pretoria on 03 March 2021.



**D HAESE**  
CHIEF EXECUTIVE OFFICER