

## Memorandum

### Going Concern

1. The directors of the Nova Group of Companies (“the Nova Group”) clearly state in the Audited Annual Financial Statements (“audited AFS”) that the Nova Group is a going concern and will be carrying on its business in the foreseeable future. A direct extract of the Going Concern statement as per the audited AFS (a copy of which is attached as Annexure A, page 6) is quoted as follows:

*‘The consolidated and separate annual financial statements have been prepared on the basis of accounting policies applicable to a going concern. This basis presumes that funds will be available to finance future operations and that the realisation of assets and settlement of liabilities, contingent obligations and commitments will occur in the ordinary course of business.’*

2. The directors clearly state that assets will be realized in the ordinary course of business. To the best of my knowledge and also confirmed by the directors in the audited AFS (Annexure A, page 7 and 8), a Compliance Notice was issued by the CIPC on 26 July 2022 and still in force and that no assets can be disposed until such time the Companies Tribunal issue a final ruling.
3. The Directors’ reference to ‘assets’ would certainly include non-current assets as well as current assets. By refining the Statement of Financial Position and removing non-tangible assets (i.e. Deferred Tax) as well as assets that cannot be disposed of in terms of the Compliance Notice, then the only ‘asset’ that can be disposed of in the normal course of business, would be the ‘Trade and other receivables’.
4. The ‘Loan Receivable’ (refer to paragraphs 27 to 35 below) is in my respectful opinion, not an asset, but in actual fact a liability.
5. Furthermore, the directors also emphasize that there is no certainty as to when this matter will be concluded, hence the statement that the ‘realisation of assets ... in the ordinary course of business’ in my opinion a factual misrepresentation by the Directors.
6. Attached as Annexure B is an analytical review (based on well-known an acceptable accounting ratios) of the liquidity status of the Nova Group for the last 3 years (as from the date of my appointment as Trustee) and it is clear that the downward trend in the liquidity ratios is indicative of the fact that the Nova Group is clearly facing severe going concern risks, contrary to the Directors’ statement that the Nova Group have adequate financial resources to continue as a going concern.

7. Based on the audited AFS, I as Trustee is of the respectful opinion, that the Nova Group is not a Going Concern anymore and therefore reached the conclusion that the Directors is conducting business in a reckless manner and in direct contravention of section 22 of the Companies Act.

### **Contravention of Section 30 of the Companies Act**

8. Section 30(1) of the Companies Act 71 of 2008 (amended) (“the Companies Act”) clearly states that a company need to *‘prepare annual financial statements’* within 6 months of its financial year-end.
9. Section 30(2)(a) of the Companies Act furthermore clearly define that annual financial statements for a public company *‘must be audited’*.
10. The Nova Group is a public company with thousands of Debenture Holders holding Debentures to the value of R 2,227,559,040 and it therefore is in the public interest that the audited AFS be prepared and distributed to all stakeholders in accordance with the stipulations of section 30 of the Companies Act.
11. As from the date of the Nova Group’s incorporation, only the 2015 audited AFS was prepared within the 6-month deadline prescribed by section 30 of the Companies Act. Only 1 set of audited AFS from a potential of 13 sets of audited AFS.
12. Attached as Annexure C is a communication issued by the South African Institute of Chartered Accountants (“SAICA”) clarifying any potential uncertainty that may exist as to what is meant by section 30 of the Companies Act.
13. The said communication issued by SAICA clearly states that *‘[t]he annual financial statements will only be viewed as completed when the annual financial statements meet all the requirements in terms of section 30 of the Companies Act and should include the company secretary certificate and the audit committee report, when applicable, as well as the directors’ report and the audit report where a company is audited.*’ (own emphasis).
14. In conclusion, on a special Board meeting dated 4 October 2023 (the last meeting I as Trustee was invited to attend the Board meetings), I raised this contravention of section 30 of the Companies Act directly with the Board but was informed by the Chairman of the Nova Group, Mr. Myburgh that the Nova Group obtained a legal opinion as to the interpretation of section 30 of the Companies Act and that the nova Group is under no obligation to issue audited AFS within the 6 month period but must ensure that the audited AFS is made available to the auditors within the so-called 6-month period whereafter the audit can then start thereafter.

15. The contents of paragraph 13 should be available on the minutes of the meeting but as this was the last Board meeting, I was invited to, I am not privy to a copy of the said minutes of the said Board meeting. However, attached as Annexure D is a chain of emails between the external auditors of the Nova Group, ARC Inc., also 'defending' this totally incorrect interpretation of section 30 of the Companies Act.
16. With 12 of the 13 sets of audited AFS not prepared within the prescribed 6-month period, it can only be concluded that the Directors is deliberately ignoring the stipulations of section 30 of the Companies Act and therefore in my opinion conducting business in a reckless manner and in direct contravention of section 22 of the Companies Act.

### **Amogela Mall / Liberty Mall**

17. Recent videos (even though not independently verified but on face value seemingly reliable) surfaced showing the dilapidated and almost beyond repair state of the Amogela Mall/Liberty Mall ("Amogela").
18. Based on information I obtained on various public platforms, this property was disposed of on 24 June 2021 for a value of R 21,500,000. The property was registered and transferred in the name of the new owner, Mystic Blue Trading 259 (Pty) Ltd ("Mystic Blue") with company registration number 2005/037602/07 on 13 December 2021 (refer to Annexure E for a copy of the deeds history dated 12 June 2024).
19. Mystic Blue is currently under provisional liquidation (refer to Annexure F).
20. The Nova Group, irrespective of the covering bond issued in favor of the Nova Group, never called upon the bond and instead, carried an 'Accrued Income' to the value of R 21,500,000 as from the date of transfer (refer to Annexure A, page 37).
21. During the 2024 financial period, the Nova Group provided for an impairment of R 16.5 million, in essence writing down the recoverable value of the property to a mere R 5,000,000. It is uncertain as to whether the impairment in the value of the property was as a result of the new owner being in provisional liquidation or as a result of the poor state of the building, or both.
22. Lastly, with Mystic Blue being in liquidation, is there no certainly as to when the R 5,000,000 will be recovered, if at all.

23. In summary, the property was initially brought over from the erstwhile Sharemax Group at a value of R 118,559,056. A significant impairment was made in 2019 to a fair value of only R 27,000,000. The property was eventually sold at a value of R 21,500,000. However, with the recent provision for impairment it is clear that the Directors will only be able to recover a maximum of R 5,000,000 of the property.
24. A link to a video that was shared on social media clearly showing the shocking state of the property is as follows:
- <https://www.facebook.com/welkomtoday101/videos/524590163383050/?mibextid=D5vuiz&rdid=yqHL3ijVisovngtB#>
25. This property is also the subject of a debt due to the Quatro Group of Companies (“the Quatro Group”). The Quatro Group provided various services to the Nova Group. The Quatro Group filed liquidation applications against 12 companies in the Nova Group in June 2023 but the Nova Group entered into a settlement agreement and offered the said bond over the Amogela property as security over the unpaid portion of the debt due to the Quatro Group. To date, the debt has not been settled and the Nova Group lodged an application for appeal on a recent ruling made in favour of the Quatro Group (refer to Annexure G for the various legal processes between the Nova Group and the Quatro Group).
26. Based on the audited AFS, I as Trustee is of the respectful opinion, that the Nova Group will not be able to recover the full selling price of R 21,500,000 for the property and possibly will an impaired value of R 5,000,000 not even be a realistic value and therefore, are of the opinion that this Debenture Holder related property has been grossly mismanaged by the Directors in fulfilling their duties to ensure maximum value will be extracted to the benefit of the Debenture Holders and therefore is conducting business in a reckless manner and in direct contravention of section 22 of the Companies Act.

#### **Loan receivable from Beneficio Developments (Pty) Ltd**

27. The audited AFS indicates a non-current loan receivable to the value of R 19,677,818 from Beneficio Developments (Pty) Ltd (“Beneficio”). Refer to Annexure A, page 16).
28. Attached as Annexure H is a summary of events outlining the timeline and amounts that was borrowed by the Nova Group.
29. It is important to emphasise that the Nova Group agreed to enter into multiple loan agreements at an astonishing interest rate of 1% per week, calculated daily, capitalized monthly.

30. In summary (Annexure H contains all the relevant details), the Nova Group honored the payment conditions, even though some payments were made after the contractual due dates. However, on 18 March 2020, the Nova Group made a payment to the value of R 362,431.33 and then stopped paying Beneficio, clearly in contravention of the various loan agreement and furthermore, claimed that the Nova Group is of the opinion that the interest rate of 1% per week was amongst others, usurious and not in accordance with the prevailing commercial interest rates applicable on normal overdraft borrowings.
31. A series of court applications and judgements followed as outlined in the attached Memorandum (Annexure H). However, in summary can the court processes be outlined as follows:
  - 31.1 Beneficio started to institute civil action against the Nova Group for payment of the balance of the amount due to Beneficio to the value of R 16,358,068.25.
  - 31.2 23 May 2023, a judgement was made by the Hight Court in favor of Beneficio and the Nova Group was ordering to pay R 32,716136.50 (made up as a capital amount of R 16,358,068.25 and interest of 1% per week totaling R 16,358,068.25).
  - 31.3 This amount once again carried interest of R 1% per week as from 23 May 2023, bringing the total due and payable to Beneficio to an amount of R 65,432,273.
  - 31.4 Op 29 Aug 2023 the Nova Group applied to the High Court for leave to appeal. This application was dismissed with costs.
  - 31.5 The Nova Group then petitioned to the Appeals Court for leave to appeal and on 12 December 2023 was the application again dismissed with costs.
  - 31.6 The Nova Group approached the President of the Appeals Court, requesting the Appeals Court the reconsider the pervious ruling of the honorable court.
  - 31.7 This request was heard on 3 March 2025 before a bench of 5 judges.
  - 31.8 On 8 April 2025, the request for leave to appeal was struck from the roll with cost.
  - 31.9 On 30 April 2025 the Nova Group approached the Constitutional Court of South Africa, once again requesting leave to appeal. The outcome is still pending.
32. In the event the Constitutional Court will accept the case to be heard and should the case be ruled in favor of Beneficio (which is highly likely), the Nova Group will be left with no available remedies to stall the payment of R 65,432,273 to Beneficio.

33. This implies that the audited AFS's 'non-current' asset of R 19,677,818 disclosed on page 16 of Annexure A, should be a current liability of R65,432,273, a material misrepresentation of R 85,110,091.
34. Over and above the material under-declaration of R 85,110,091, the Nova Group would have incurred millions of rands of their own legal expenses in an attempt to overturn 3 applications for leave to appeal as well as having to pay all the legal expenses of Beneficio as cost orders were issued to the Nova Group in favour of Beneficio on all the fruitless appeal attempts.
35. It is clear from the Memorandum that the Nova Group were comfortable in utilizing the borrowing facilities offered by Beneficio at ultra exorbitant interest rates and then argue that the agreed upon contractual conditions all of a sudden, is usurious. This arrogant approach by the Nova Group in effect will cost the Nova Group millions of Rands in legal costs as well as the payment obligation of R 65,432,273.
36. The effect of the Nova Group not complying to the loan agreement obligations, in my opinion has caused unnecessary financial liabilities on the Nova Group and therefore is the Directors in my opinion conducting business in a reckless manner and in direct contravention of section 22 of the Companies Act.

#### **Trade and other payables**

37. Trade payables have increased to a very worrisome level. Various creditors have reverted to court applications in an attempt to force the Nova Group to pay overdue debt to them. These court applications in my respectful opinion, casts serious doubt as to the Nova Group's ability to continue as a going concern, contrary to neither the Directors nor the external auditors, ARC raising any qualifications on the obvious going concern risks the Nova Group is facing.
38. Furthermore, the Nova Group as landlord, collects rent as well as the utility usage from the various tenants on a monthly basis with the obligation to pay the collected utilities onward to the respective municipalities. Hence, the Nova Group act as a conduit to collect the amounts due to the respective municipalities and the settle the monthly utility usage with the respective municipalities on behalf of the tenants.
39. It is public knowledge that the Nova Group accrued significant arrear utilities accounts due to, amongst other, the Municipality of Mbombela, in essence collecting the utilities from various tenants but utilizing the funds internally and not settling the respective utility accounts. Refer to various news articles issued by Moneyweb (attached as Annexure I).

40. Attached as Annexure J is an email I, in my capacity as Trustee of the Debenture Trust, sent to the Municipality of Mbombela (“Mbombela”) after the publication of the Moneyweb articles, requesting extracts of the utility accounts with respect to the Village Mall and Tarentaal/Courtside Mall.
41. The attachments to the email referred to above (attached to this Memorandum as Annexure K), contained the amounts due to Mbombela by the 2 respective properties/companies, clearly proving that the Nova Group is not settling the utilities accounts as and when due:
- 41.1 Tarentaal – R 1,656,730.74 as at March 2024 (R 1,427,442.24 – 7 April 2023; and
- 41.2 Village Mall – R 3,977,569.84 as at March 2024 (R 1,405,770.04 7 April 2023).
42. From the extracts it is clear that the Nova Group for months on end did not pay the respective utilities accounts even though the said amounts were collected from the respective tenants.
43. Important to note with respect to Tarentaal as indicated in paragraph 41.1 that even though on face-value it appears that the Nova Group did ‘maintain’ the amounts due to Mbombela, is this in actual fact not the case.
44. Attached as Annexure L is an email as well as a very important letter shared with me in my capacity as Trustee of the Debenture Trust clearly reflecting an amount of R 1,800,000 the Spar Group of Companies (“the Spar Group”) paid to Mbombela in a desperate attempt to restore the supply of electricity to Tarentaal.
45. Furthermore, the payments made to Mbombela subsequent to this R 1,800,000 payment, was the rental payments Spar (and possibly other tenants as well) paid directly to Mbombela in terms of an agreement reached between Mbombela and the Spar Group. Notably, the Nova Group did not assist with the payment arrangement and stayed silent throughout this negotiation process.
46. Based on the audited AFS as at 29 February 2024, the net VAT payable position of the Nova Group to SARS are as follows:
- |                  |                                    |
|------------------|------------------------------------|
| - VAT payable    | R 21,964,349 (2023 – R 15,035,569) |
| - VAT receivable | R 5,589,951 (2023 – R 5,139,630)   |
| - Total          | R 16,374,398 (2023 – R 9,895,939)  |
47. Based on these amounts as disclosed in the audited AFS as well as an analytical review of the audited AFS, it is clear that the Nova Group is not settling its potential monthly VAT liabilities as prescribed by the Value-added Tax Act 89 of 1991 (amended) (“the VAT Act”). Attached as Annexure M is an analytical review of the potential VAT liabilities the Nova Group is theoretically accruing on a monthly basis and not paying on a monthly basis to SARS.

48. Furthermore, in terms of section 22(3) of the VAT Act must a VAT Vendor, on all unpaid creditors older than 12 months, reverse the initially claimed Input VAT and declared the VAT on the unpaid portion as Output Vat. Due to the lack of information available in the audited AFS, it is uncertain as to whether the significant increase debt due to SARS, as a result of this adjustment or purely from the non-payment of VAT due to SARS.
49. Furthermore, Corporate Income Tax has increased from R 50,723,084 to R 62,003,298, an increase of R 11,280,214.
50. From the information provided in the audited AFS, the levels of VAT and Income Tax due to SARS is a very serious matter. SARS is a preferential creditor (combined with the very likelihood of various municipalities on the unpaid utility accounts) and in the event a property is sold, these payments, that should have been paid by the operating income of the Nova Group, will then have to be deducted from the return on the disposal of the property. This means that the already at-risk Debenture Holders will get even less on their investment
51. Lastly, to emphasize the blatant ignorance of the Nova Group to settle VAT and Income Tax liabilities as and when it becomes due, interest and penalties to SARS totaling R 8.8 million was accrued for in 2024. As from 2021 a staggering amount of R 21.75 million was paid (accrued and possibly not paid as yet) in terms of interest and penalties to SARS, confirming the narrative that the Nova Group is not settling the debts due to SARS.
52. Attached as Annexure M is a detail analytical review performed on all the trade payable, VAT and Income Tax liabilities, clearly showing that the Company do not have adequate short-term/current assets to settle the currently liabilities as prescribed by the Companies Act, contrary to the Directors stating that the Nova Group is a still a going concern.
53. Various other matters can also be elaborated upon in this Memorandum but in my opinion, the matters listed in this Memorandum leaves no doubt that the Nova Group is not a going concern anymore and also that the Directors clearly did not fulfil their duties as guardians of the R 2,2 billion Debenture Liability and therefore, in my opinion, conducting business in a reckless manner as outlined by section 22 of the Companies Act.
54. In conclusion, I as Trustee of the Debenture Trust are of the opinion that these matters need to be reported without delay to the following parties:
  - 54.1 The Directorate for Priority Crime Investigations (“DPCI”);
  - 54.2 The South African Institute of Chartered Accountants (“SAICA”); and
  - 54.3 The Independent Regulatory Board for Auditors (“IRBA”).

In the event the CIPC needs any additional information or needs to convene a physical meeting with respect to the contents of this Memorandum, please do not hesitate to contact me without delay

Kind regards

*J Tromp* digitally signed by J Tromp

J Tromp  
Trustee of the Debenture Trust

24 May 2025