IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG LOCAL DIVISION, JOHANNESBURG)

Case Number: 36957/2019

In the matter between:

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| BOLEPU HOLDINGS (PTY) LTD | First Applicant |
| THE TRUSTEES FOR THE BEING OF THE MAMPA SEROLE COMMUNITY TRUST | Second Applicant |
| THE TRUSTEES FOR THE BEING OF THE JIBENG COMMUNITY TRUST | Third Applicant |
| THE TRUSTEES FOR THE BEING OF THE ROKA PHASHA MAKGALANOKO COMMUNITY TRUST | Fourth Applicant |

and

| | |
|---|---|
| CORRIDOR MINING RESOURCES (PTY) LTD | First Respondent |
| SEFATENG CHROME MINE (PTY) LTD | Second Respondent |

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FIRST RESPONDENT'S ANSWERING AFFIDAVIT

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I, the undersigned,

KABU RONALD NKADIMENG

do hereby make oath and state that:-

1.

1.1 I am the Chief Executive Officer and a Director of the First Respondent and duly authorised to oppose this application and to make this affidavit by virtue of my position as aforementioned.

1.2 The content of this affidavit is true and correct and falls within my personal knowledge, unless indicated to the contrary.

1.3 Insofar as I make submissions of a legal nature, I do so on the basis of the advice received from the First Respondent's legal representatives and request the Honourable Court to accept same on such basis.

1.4 For the sake of convenience, I shall refer in this affidavit to the following abbreviations:

1.4.1 The First Applicant shall be referred to as ("Bolepu");

1.4.2. The Second Applicant shall be referred to as the ("Mampa Serole Community Trust");

1.4.3. The Third Applicant shall be referred to as the ("Jibeng Community Trust");

1.4.4. The Fourth Applicant shall be referred to as the (Roka Phasha

Makgalanoko Community Trust");

1.4.5. The First Respondent shall be referred to as ("CMR");

1.4.6. The Second Respondent shall be referred to as ("Sefateng"); and

1.4.7. The Limpopo Economic Development Agency shall be referred to as ("LEDA").

2.

Before I turn to deal with the specific allegations in the founding affidavit as such, there are a number of issues that I need to place on record and bring forward for consideration by the Honourable Court. This affidavit will, therefore, be structured as follows:

2.1 Firstly, I deal with the issue of urgency;

2.2 Secondly, I deal with the competency of the orders sought;

2.3 Thirdly, I deal with the purported basis of the relief sought;

2.4 In the fourth instance, I deal with the non-joinder of LEDA and the impact of the orders sought to be granted; and

2.5 In the final instance, I traverse the founding affidavit in so far as will remain necessary.

AD URGENCY

3.

3.1 The relief the Applicant seeks relates to orders compelling the Board of Directors of CMR to take six different resolutions, as reflected in Annexures "A" to "F" of the Notice of Motion.

3.2 The requirement for such orders purportedly flow from the entering into of an agreement between Sefateng and other parties, an agreement purportedly entered into on 1 December 2015, referred as the SUMDEV Agreement by the Applicants. I shall use the same terminology for this Agreement.

3.3 Due to the manner in which the SUMDEV Agreement was structured, Sefateng was effectively excluded from all participation in the process of putting together the mechanisms with which the SUMDEV Agreement would be given effect to and, in particular, the obligations in respect of the obtaining of the necessary finances to be able to carry out the underground mining.

3.4 As early as 6 June 2019, the Applicants in the present matter and in particular, Mr Blaauw, the deponent to the founding affidavit, would have been aware that there were issues surrounding the finalisation of

the SUMDEV Agreement and in particular, the financial ramifications attached thereto, which would of course, involve the question of the financing.

3.5 I make this statement because on 6 June 2019 I sent an e-mail to various role-players and representatives wherein I challenged the resolution taken on 5 June 2019 and requested that further steps be taken to protect the interests of Sefateng in the SUMDEV Agreement. Due to the significance of what I have stated and the activities that took place further, I quote the content of my e-mail, a true copy whereof I annex hereto as Annexure "KN1"

*"Dear SCM Directors,*

*At the abovementioned meeting held yesterday, there were two important decisions taken:-*

1. *That the Board ratify the decision by MTC Underground to appoint M & R as their sub-contractor for the development of the underground mine at SCM, Swartkoppies Farm. My issue with this decision and the resolution taken, is that, in the first place, the Board was not afforded an opportunity through a proper submission pertaining to the subject matter. The*

*issue came through a heated discussion in the meeting and subsequently a decision was taken which resulted in a resolution binding the company, irrespective of processes that needed to have been followed. In the mean time it was acknowledged that SUMDEV Agreements had not as yet become effect, and only certain conditions have been met, for example, the Financial Close. Currently, the Board of SCM has commissioned a legal and financial review of all SUMDEV Agreements, and in this case Norton Rose & Fieldstone has been appointed. How do you then take a resolution that would in future have a financial impact to the company, but also that you have commissioned a review of the same agreement, but on the one side you give a green light to the agreement.*

*These two companies have not as yet completed their reviews, which you have completed and aggrieved by SCM and their shareholders, will lead to financial close, which ultimately lead to SUMDEV Agreements becoming active. We should also bear in mind that the purpose of these reviews, is to ensure that the best interests of SCM and that of its shareholders is secured.*

*My issue therefore with the Ratification of the appointment of M & R as a sub-contractor to MTC Underground, is that the legal and financial reviews of the SUMDEV Agreement have not been completed, and we have not as yet reached the financial close as one of the conditions in the SUMDEV Agreement. Therefore, I would like to withdraw my support for the approval of the appointment of M & R as a sub-contractor to MTC Underground, without prejudice.*

2. *The second issue pertains resolution to the Credit Facility Agreement, which was provided to us during the meeting yesterday. Again, we were not provided with this proposed resolution on time, to enable us to apply our mind properly. Similar to the first resolution, for the Credit Facility Agreement to be effective and be implemented, there are condition precedent that should be met. Since the legal and financial reviews are not yet completed, there is therefore no legal basis to take the resolutions that the Board was represented with. Without prejudice to, I, hereby formally withdraw my support of the resolution for the Credit Facility Agreement.*

*It should also be noted that, in the meeting it was agreed that Norton Rose will be provided with the contract between M & R and MTC Underground, with visible figures and not shaded figures for a proper due diligence."*

3.6 Fieldstone had been appointed to review the structure of the contracts and the consequent financial implications and on 18 June 2019 an e-mail was received from Jonathan Adams, the Vice-President of Fieldstone addressed to, amongst others, Mr Blaauw, Ms Kabela Maroga, one of the Directors of CMR and Sefateng. I annex such e-mail hereto as Annexure **"KN2"**

3.7 Several significant comments are made in this e-mail, including the fact that Fieldstone indicated that it could not do a partial scope job as this would not place them in a position to properly advise Sefateng. In the e-mail it is stated that approximately five weeks would be required for them to do a proper review of the situation and the following statement is made:-

*"Our preference would be for a fresh buildl to incorporate several changes (including clear separate inputs, better flow and layout, and real basis versus nominal basis switching). I am frankly*

*very surprised that the model we were shown passed audit, and we still would like to actually see the BDO Audit Report on this (including the standard model audit .....input verifications scope and tick box). It was then suggested that a final review of opinion on the model and a commercial review on the investment decision for SEFATENG shareholders be prepared."*

3.8 In short, Fieldstone appeared to share the same disquiet that I and Ms Maroga, another of the CMR appointed directors, felt about the model of the project as well as its financing.

3.9 Mr Blaauw effectively shut down any prospects of Fieldstone conducting the full review that I and Ms Maroga, both in our capacity as Directors of Sefateng and in the interests of Sefateng itself, and in the interests of our parent body CMR, the majority shareholder in Sefateng, felt was necessary.

3.10 At this point in time, I need to raise with the Court a concern that shall be further expanded upon later on in this affidavit and that is the concern that Mr Blaauw, in our view, has a very serious conflict of interest by virtue of the different positions he holds. This conflict is further exacerbated by the fact that he is the deponent to the

Applicants' founding papers and at all times seems to have pushed the agenda of other parties and not the interests of Sefateng itself. In the e-mail of 18 June 2019, a true copy of which is attached hereto as Annexure **"KN3"**, a response to Fieldstone and raising of eye-brows, Mr Blaauw states the following:-

> *"Dear Audited Committee Members*
>
> *Below is the response from Fieldstone on the revised scope of work. Essentially they require a minimum of five weeks at a cost of R750 k to provide the review as detailed below. Unfortunately we do not have the luxury of time to conduct this review. (The delay of this nature will cost us easily R30 million to R60 million and we will have to retrench staff).*
>
> *I need your collective input on a way forward please."*

3.11 Mr Blaauw effectively shut down the appointment of Fieldstone at this point. It was not in Bolepu's interests to have Fieldstone review the agreements and suggest a more effective and profitable arrangement for the SUMDEV Agreement, which would be to the benefit of Sefateng itself. Rather, by failing to review the agreements, the effect is that the

agreements are structured to the benefit of Bolepu and its allies, and associated companies. I shall deal later hereunder with the basis for this statement.

3.12 As a result of Mr Blaauw's interference, Fieldstone was not appointed as was reasonably required by both I and Ms Maroga.

3.13 It was therefore abundantly clear by June of this year already that disputes as to the financial model and indeed the model itself of the SUMDEV Agreement were communicated and such disputes simply continued to escalate in the months that continued.

3.14 I during August 2019 attempted to arrange meetings with various role players in the attempt to discuss these financial issues and the entire structure of the SUMDEV Agreement and whether same could constitute a benefit for Sefateng and its shareholders. What made the situation of the interests of Sefateng and those of its majority shareholders, namely CMR more acute, was that after almost four years of open cast mining, with a very similar structure as the SUMDEV Agreement, Sefateng had made no profit and could not pay out a single dividend to any of its shareholders, including the three Community Trusts. Much is made in the affidavit on behalf of the Applicants of the so-called benefits for the community, but in actual fact the only people

who will really benefit and make any meaningful money from the SUMDEV Agreement are the entities in which Mr Blaauw is involved and the shareholders of such companies, including an American owned company, Traxys. Again, I shall deal with this in detail hereunder and show to the Honourable Court the basis for this statement.

3.15 Accordingly, I am advised and submit to the Honourable Court that in these circumstances where this dispute has been present for numerous months, the Applicants have created their own purported predicament in that they cannot simply one morning wake up and decide that because their commercial interests are now allegedly affected and they have taken no steps to enforce their purported rights, they can jump the queue and bring this application on an urgent basis. The application consists of well over 400 pages, involves extremely complex issues of corporate governance, constitutional and community obligations from State owned entities and complicated issues relating to company and contractual law. Notwithstanding, the Applicants chose to attend to this matter in quite a careless and non-urgent manner.

3.16 I am advised that in these circumstances, the Applicants should they have wished to seek the orders in the terms sought presently, they should have done so many months ago. The Applicants, it is submitted, chose not to follow this route. It follows, therefore, that any urgency that

may exist at the present time is self-created. Accordingly, at the hearing of the matter we shall request that this application be struck from the roll for lack of urgency with costs, such costs to include the costs consequent upon the employment of two Counsel.

COMPETENCY OF ORDER

4.

4.1 I am advised and submit to the Honourable Court that it is not competent for a Court to make an order in the terms as sought by the Applicants. In effect what the Court will order is that the Board of Directors of CMR, the majority shareholder in Sefateng, **MUST** take a resolution in very specific terms and with very specific consequences.

4.2 A director has very specific obligations and duties, including fiduciary duties towards the shareholders of the company and the company that it serves on the Board of Directors. In this case, the company is CMR. As will also be demonstrated, a director is also obliged to pay attention to the human rights impact of their decisions.

4.3 Part of such fiduciary duties is not only to look after and promote the interests of the company, but the interests of the company in its

subsidiaries and in mind of its general obligations and duties. In the present instance, CMR is a wholly owned subsidiary of LEDA, a State-owned entity, as is CMR and in fact, Sefateng due to the 55% majority shareholding that CMR has in SEFATENG.

4.4 The purpose of CMR is to promote and advance the interests of the Limpopo Province and in particular, the communities within the province in relation to mining operations and the control of mineral rights and mining of such minerals. Clearly, the intention is that such minerals should be exploited as being owned by the State, for the benefit, as far as possible, for individuals and communities within the Limpopo Province in particular and South Africa as a whole.

4.5 The deponent acknowledges the importance of the community objectives and attempts to rely upon them as a manner to persuade the Court to make the order. What the deponent fails to disclose to the Court, and as I have highlighted above, there does not seem to be any meaningful financial reward for Sefateng and its shareholders itself as a result of the proposed SUMDEV Agreement and as a result no meaningful reward for the communities.

4.6 As set out above, an attempt was made to have these aspects reconsidered. This was simply put to a stop by Mr Blaauw and his allies in Traxys.

4.7 The first written resolution attached as Annexure "NOM A" reflects the very proposition that has been put forward the Court at present. In Paragraph 1.2 of such resolution it is stated that:-

> *"The Board is requested to consider and, if deemed fit, approve the resolution set out below."*

4.8 Furthermore, it is stated in Paragraph 2.5 of the same annexure that:-

> *"A copy of each of the Project Finance Documents (or the latest version thereof) has been provided to the Board for consideration before the date of these resolutions. By his/her signature hereto, each director of the company confirms that he/she has considered the terms of, and the transactions contemplated by the Project Finance Documents, and that he/she considers it in the interests of the company's business and to the commercial benefit and advantage of the company to enter into the Project Finance Documents. (emphasis added)"*

4.9 As indicated previously and as will be shown further hereinbelow, I and Ms Maroga certainly do not believe that it is in the interests of either CMR, the company in the resolution or in the interests of Sefateng, the company that is a party to the SUMDEV Agreement.

4.10 What is of further concern and should raise the brightest of red flags with the Court and anyone who has sight of these documents, is the provisions of Paragraph 4.3 in terms of which a resolution is sought that:-

> *"Any one (1) director of the company, acting alone or together with any other director of the company be and is hereby authorised, for and on behalf of the company, to:-*
>
> > *Negotiate, settle and agree, in their absolute discretion, the final terms of the Project Finance Documents which are, as at the date of passing of these resolutions, not yet in final form and any related documents."*

4.11 Such person is also in terms of Clause 4.3.4 of the resolution given an absolute discretion to make any amendments to the Finance Documents.

4.12 It is, with respect, untenable that a single individual be given the power to make decisions of such a nature that the Board of CMR should be making in respect of any possible financial exposure to contracts or financing. Even the resolution, which resolution I need to point out has been prepared by Bolepu and its attorneys, states that the final version of the Project Finance Documents have not as yet been drawn. Accordingly, at this stage it would be unclear exactly what the Board of Directors of CMR would be allowing such an individual to actually go and do.

4.13 A further point of concern is that very recently it has been stated that apart from the R470 million that reference is made to in the papers that the SUMDEV loan from Nedbank would incorporate, there would apparently be, in terms of the same provisions of the SUMDEV Agreement, a further loan in an amount of approximately R2.4 billion which will be paid for future capital expenditure and contingencies when the expansion of the underground mine is required and the replacement of infrastructure and working machinery and the like needs to be financed. Such information was conveyed to both myself and Ms Maroga in discussions

4.14 What is demonstrated in the first tranche of finance that is to be approved in terms of the documents that the Applicants are demanding the Board of Directors to sign is that huge amounts of money apparently should still need to be borrowed. Notwithstanding this, the Applicants seek this by way of Court order compelling the directors to do so, rather than by the exercise of their discretion and in compliance with their fiduciary duties,

4.15 Apart from the obvious concern as to what the total amount of money this would all be, what this demonstrates is that in the model that is being presented and which Fieldstone was critical of in the e-mails referred to above, the model will extract profit to all the other entities involved in the SUMDEV arrangement to such an extent that there will be no working capital left for Sefateng to be able to finance the further expansion and continuation of the underground chrome mining, which we understand to have a life of 20 to 30 years.

4.16 The scenario therefore that is being foreseen at the moment is exactly the same scenario as we have already experienced during the open cast mining process, where it appears that all the other parties whom are involved in the process are making money and the dregs of the contract are then paid out to Sefateng, which is then used up by Sefateng to meet the obligations that have already been imposed on it,

such as the payment of the diesel fuel component and the security at the mine component.

4.17 There has actually been no significant value to the communities and in this respect we are referring to not only the three Trusts whom are involved, to whom there has been limited value, but to the community of Limpopo as a whole and the South African community in general. The idea is that from the exploitation of minerals such as this, it places the Provincial Government and State-owned entities such as CMR and Sefateng in a position to empower and finance other projects which create work opportunities, infrastructure and income both for the State and the community. This has simply not occurred and it does not appear that there is any likelihood that it will occur flowing from any income generated in respect of the Sefateng SUMDEV Agreement.

4.18 The Court will see that a figure of R300 odd million is thrown around as being the profit that will be made over the life of the mine of 20 to 30 years to Sefateng. The problem with this so-called profit is that over the 20 to 30 years Sefateng has to finance the diesel, the security and other operational costs. Even if the R300 million would be forthcoming, it would simply be subsumed by Sefateng in maintaining its existence. It would appear upon a proper analysis of the agreement that just sufficient money is being channelled to Sefateng to keep it alive as a

legal entity. To place this in perspective, the R300 odd million that is promised as a profit for Sefateng comes out of a projected R24 billion turnover in the project. In other words, Sefateng will be receiving a mere drop in the ocean compared to the total money that is to be expended in this project.

THE PURPORTED BASIS OF THE RELIEF SOUGHT

5.

5.1 The Applicants' case, as we understand it, is that CMR has to sign the documents attached to the Notice of Motion to meet the suspensive condition in the SUMDEV Agreement on the basis of obligations that the Applicants allege arise out of the 2014 Shareholders Agreement ("SHA"). In particular, the Applicants rely upon Clause 14.2 and it would appear Clause 15 of the 2014 SHA.

5.2 The agreement that appears to be relied upon, the SUMDEV Agreement, Annexure "FA10", is an agreement between four parties, namely:-

5.2.1. SEFATENG Chrome Mine (Pty) Ltd;

5.2.2. SEFATENG Underground Mining Development (Pty) Ltd;

5.2.3. Steyn Kinnear Inc.; and

5.2.4. MTC Underground Mining (Pty) Ltd

5.3 In particular, the suspensive condition that is the basis both for the purported urgency and the relief is to be found in Paragraph 2.2.4 of the agreement and states that:-

> *"On or before 30 November 2019, SUMDEV procures financing, to the satisfaction of SUMDEV acting reasonably, for all or substantially all of the reasonably anticipated costs to be incurred in connection with constructing an underground mine on the property (including, without limitation to design, construct, install and maintain all mining infrastructure."*

5.4 It is clear from the aforementioned clause that it is SUMDEV itself that needs to procure this financing and not Sefateng. In fact, the financing that SUMDEV must procure must be *"to the satisfaction of SUMDEV acting reasonably"*.

5.5 It would appear from this that SUMDEV has been given the sole authority, to on terms that only it considers reasonable and acceptable, to procure such financing. It would appear that no other party to the agreement was to be part of such procuring of finances and it was left completely in the hands of SUMDEV. It is clear therefore that SUMDEV was the party who was to procure the financing for its own benefit and to enable it to perform the work that it intended to do in terms of the agreement.

5.6 In the first of the resolutions that the Applicants wish to compel CMR to enter into (NOM A), the resolution describes the background facts as being:-

> "2.2 *SCM and SEFATENG Chrome Value Development (Pty) Ltd ("borrower") intend, inter alia, to enter into a project for the design, development, financing, construction, operation and maintenance of the underground chrome mine at the Mine and any other works contemplated by the project documents ("the project").*
>
> *2.3 Pursuant to the implementation of the project, SCM has, or will conclude an agreement entitled "the Credit Facility Agreement" in its capacity as guarantor with, inter alia, the*

*borrower, Nedbank Ltd (acting through its Nedbank Corporate Investment Banking Division, as an Arranger, Agent, Account Bank and Original Lender ("the Original Lender") and CAPMOUNT 20 (RF) (Pty) Ltd as debtor guarantor ("the Debt Guarantor"), in terms of which, amongst other things, the original lender will make loan funding available to the borrower to be utilised in the funding of eligible costs as provided for in the agreement ("Credit Facility Agreement")."*

5.7 A number of issues arise from this. Firstly, Sefateng Chrome Value Development (Pty) Ltd or "*the borrower*" is not a party to the agreement entered into between Sefateng and the other parties in terms of the SUMDEV Agreement. The resolution is also done on the basis that an agreement will still be entered into between SCM and the borrower for this project. To the best of my knowledge, no such agreement has been entered into.

5.8 Furthermore, SCM has indicated that it has or will conclude a Credit Facility Agreement in its capacity as a guarantor with the borrower and Nedbank Ltd. Whilst reference is made to this Credit Facility Agreement in the papers, no detail of the Credit Facility Agreement is

supplied nor is a copy of the Credit Facility Agreement annexed to the papers.

5.9 One can only assume that the Credit Facility Agreement is the agreement that has been or will still be entered into between Nedbank Ltd and the borrower to which agreement Sefateng will stand as a guarantor, one would imagine, for the repayment of such loan by the borrower from Nedbank Ltd.

5.10 The role of Capmount 20 (RF) PTY is also unknown in the structuring of the financing and why they are part of the financing transactions.

5.11 What is clear from what I have stated above, and from the wording of the resolution, is that Sefateng itself is clearly not the borrower of the money nor is SUMDEV, the party mentioned in the SUMDEV Agreement, apparently the borrower.

5.12 The resolutions and effectively the relief therefore that the Applicants are seeking is to compel CMR through the resolution to agree to the Subordination Agreement, the letters of undertaking and the Addendum to the Trust Deed of Jibeng Community Trust.

5.13 I am advised and submit to the Honourable Court that Clause 14 of the 2014 SHA is not applicable since what we are dealing with here is not

the company Sefateng's capital requirements, but the capital requirements of the borrower. Furthermore, Clause 14 requires that the company, SCM, should it require capital requirements such be paid out of its own resources and only if it cannot to do so, it should do so by means of loans. In our opinion, such loans should be loans that Sefateng itself makes from financial institutions and other appropriate third parties, provided that such loans can be obtained on commercially reasonable terms.

5.14 As indicated, SCM is not the borrower of the money and it is unknown what the commercial terms of the loan is that the borrower has purportedly obtained from Nedbank. No such detail is forthcoming at all in the Applicants' application. The lack of candour in this regard is reflective of the manner in which the entire SUMDEV Agreement has been put together and attempted to be enforced.

5.15 Even if, which we deny, that Clause 14 is applicable at all, it would still be subject to the requirement that the loan would have to be on commercially reasonable terms, which is unknown and not disclosed. Yet the Applicants wish the Court to compel CMR to take resolutions with far reaching efffect.

5.16 Lastly, Paragraph 14.2.3 of the 2014 SHA provides for cash inputs to be done, which can only be called for on 60 days' notice and on the basis of certain provisos. No such cash call has been made and it does not appear to be the Applicants' case that there has been such a cash call.

5.17 On such basis it shall be submitted to the Honourable Court that Clause 14 of the 2014 SHA is not applicable to the situation and cannot found a basis for the Applicants' relief.

5.18 Furthermore, it is clear from the fact that the resolution that I have quoted above, deals with SCM itself, standing as guarantor for the borrower's loan. This, in our view, confirms the fact that it is not SCM that is raising the capital, it is not the borrower and as such, there is no obligation on CMR to perform any of the actions called upon.

6.

6.1 On my understanding of Clause 15 of the SHA, which deals with the situation when the shareholders must provide suretyships or guarantees, the following, in our view, is the position:

6.1.1. Firstly, it does not appear that CMR is being requested to

provide as suretyship or a guarantee for the performance of Sefateng.

6.1.2. Even if I should be mistaken and in some manner the documentation that the Applicants wish CMR to sign and the resolutions that they wish it to take, does somehow constitute a guarantee, then Clause 15 of the 2014 SHA clearly states that a shareholder, in this case, CMR would only be obliged to give a guarantee or suretyship for the obligations of the company in favour of a third party pro rata to its shareholding in the company, if the conditions set out in Clause 15 have been met.

6.1.3. The first of these conditions is that all the shareholders have consented in writing and proven their ability to provide, jointly and in proportion to their shareholding, guarantees or suretyships as obligations of the company. In other words, the five shareholders would have to each consent in writing and prove that they have the ability to provide the required guarantees and/or suretyships jointly i.e. per the shareholding.

6.1.4. The result of this is that CMR cannot be expected to guarantee or underwrite by way of suretyship more than 55% of the obligations of SCM and only when the other shareholders have

proven their ability and undertaken in writing to provide equivalent guarantees equal to their own shareholding.

6.1.5. No allegations have been made in the founding papers that any of the other shareholders have been requested to consent to a guarantee or suretyship of this nature, or that even if they had been requested to do so, have shown an ability to underwrite such guarantee or suretyship.

6.1.6. Clause 15.1.2 makes this situation even clearer when it is stated that the third party funder must accept that it will accept these guarantees or suretyships on a joint basis pro rata i.e. that they could not recoup more than each shareholder's pro rata shareholding of the obligation.

6.1.7 As I have stated above, no evidence or allegations have been made to show that Clause 15 is or has become operative and it simply cannot be the basis upon which the Applicants wish to compel CMR to enter into the agreement or to take the resolutions that they are attempting to compel CMR to do.

6.1.8. Clause 15.2 of the 2014 SHA also makes it clear that no shareholder shall be obliged to give any guarantee or suretyship in favour of any third party for the obligations of the company,

save for the manner set out in Clause 15.1, which I have dealt with above.

NON-JOINDER

7.

7.1 I am advised that there is a material non-joinder in the present matter. CMR is a 100% subsidiary of the Limpopo Economic Development Agency ("LEDA").

7.2 As stated above, the purpose of LEDA is to promote the economic upliftment and improvement of the citizens of the Limpopo Province.

7.3 One of the manners in which, as indicated previously, this has been done is to create CMR with a specific purpose of attempting to achieve these objectives of LEDA specifically in the mining industry.

7.4 This is therefore what led to the creation of SCM with a majority shareholding of CMR therein.

7.5 It is submitted in the circumstances, where the Applicants are attempting to force the directors of CMR, whom are appointed by LEDA as the parent company of CMR, to take resolutions that would have a significant impact on, not only CMR, but also the activities of SCM, that

LEDA has a direct and substantial interest in such activities and is a necessary party to these proceedings. We are not dealing with the usual commercial and/or contractual wranglings between private companies whose sole interest is in pursuing their own profitability and making money for their shareholders. In the present instance, there is a substantial community interest to be fulfilled, which takes this debate outside of the usual parameters of narrow commercial interests. It is on this basis that I am advised to submit that CMR is obliged to pay attention to the human rights impacts of its decisions.

7.6 By failing to join LEDA, the Applicants have failed to consider what is in the best interests of CMR (a subsidiary company of LEDA) and Sefateng (wherein CMR is a majority shareholder). The impact of this unfortunate failure is that the interests of other stakeholders are excluded. Moreover, the orders sought have the potential to bring about a violation of human rights, particularly if one considers the underlying socio-economic challenges of mining-affected communities. Regard must be had to the implementation of social labour plans by mining companies as obligated by the Mining Charter

7.7 Juristic entities are enjoined by Section 8 of the Constitution of South Africa, 1996 to protect human rights and the interests of civil society.

project. In this regard, I attach hereto as Annexure "KN5" e-mails dated 23 November 2015, between Ms K Maroga, one of the CMR appointed directors and the Company Secretary of SEFATENG, one Ms A Swart at the time and Mr Blaauw, wherein she takes the concerns she had raised at the meeting further.

19.3 Ms Maroga raised her concerns about the issues that have been placed before the Board and did not approve the resolution at the meeting of 19 November 2015. Ms Maroga indicated and requested that a legal opinion needed to be obtained because she did not believe that SEFATENG can enter into the SUMDEV Agreement without each and every shareholder independently approving such an arrangement and a further concern that SEFATENG could not commit the life of the mine in such an agreement without having finalised the feasibility study and without the individual shareholder approval.

19.4 Ms Maroga is a qualified Chartered Accountant and an experienced business woman with qualifications in engineering and she was concerned about the transaction, which she also believed to be very unusual in the mining industry.

19.5 I can further state that no formal legal opinion was ever provided and again the contract was simply pushed through.

9.5 One of the conclusions reached in KN3 paragraph 12.4, is that:-

> *"CMR is a state-owned entity and the transactions it enters into should at all material times comply with the provisions of PFMA and other legislation intended in showing transparency and accountability. We do not believe that the commercial contracts Bolepu entered into with the service providers for SEFATENG are in the public interests and those of the communities intended to benefit out of the mining development taking place in the areas. We are of the opinion that they are against the tenor and spirit of the MPRDA."*

9.6 I am advised that directors have a fiduciary duty to act in good faith and in the best interests of the company. Hence, they ought to use their authority and carry out their functions in good faith and in what they deem to be in the best interests of the company. Directors must exercise their discretion *bona fide* in what they consider – not what a court may consider – to be in the best interests of the company, and not for a collateral purpose.

9.7 The Board of CMR has a duty to protect Sefateng from self-interested directors. Mr Blaauw ought not to put his own interests above the company's interests. His decisions should at least benefit Sefateng.

9.

AD PARAGRAPHS 1 AND 2 THEREOF

9.1 The content hereof is correct.

9.2 The position of Mr Blaauw has become controversial. It appears, in our view, that he has a conflict of interest between the various parties he represents, and on whose boards he serves and the relationship between the companies that have become involved in the underground mining project.

9.3 An opinion was prepared by Maboku Mangena Attorneys Incorporated, a true copy whereof is annexed hereto as Annexure **"KN3"**.

9.4 From the discussion and annexure to the opinion, it becomes clear that Mr Blaauw is involved in one way or another with each and every of the companies that is to benefit from the underground mining project. They are all in some manner associated, have common shareholders and/or directors and it would appear that the SUMDEV Agreement and events thereafter have been put in place in such a manner that all of these related companies benefit at the expense of Sefateng, the communities and in fact the general citizen of the Limpopo Province.

imposes a social obligation upon companies The effect of Section 7 is that directors cannot simply ignore human rights when running the company.

7.12 I am advised that full legal argument on this aspect shall be addressed to the Honourable Court.

8.

In light of the above, I will now turn to deal with the founding affidavit. The responses to the founding affidavit should be understood in the context of the preamble to the *seriatim* responses below. I therefore attempt, as best as I can and to the extent reasonably appropriate, to avoid repetition. I ask that all introductory remarks as contained in the paragraphs above should be considered as if they are expressly incorporated herein below. Any failure and/or omission to reply to any specific allegation detailed in the founding affidavit, should not be construed as an admission thereof, and in fact, it should be accepted that same is denied.

a commitment to a high level of transparency and operational sustainability to address the demands of relevant stakeholder groups.

7.10 Any proposed financial structure ought to translate the mineral wealth into sustainable economic development at grassroots levels. Presently with what is being proposed, the mineral wealth of the country will end up in the pockets of exploitative companies and individuals rather than benefiting the broader population. The Applicants ought to rather seek to strike an equitable balance of interests, ensuring that mining is productive and profitable, as well as being fair to foreign investors, South Africa and affected local communities alike.

7.11 The impact of CMR signing the annexures to the Notice of Motion would have far reaching consequences. This would not be in the best interests of Sefateng. I am advised that our courts should interpret and apply the duty to act in the best interests of the company in manner that is consistent with the Constitution. In this regard I am advised that Section 7 of the Companies Act, 2008 has changed the traditional understanding of the duty to act in the best interests of the company and brings its application within the scope of the Bill of Rights. In addition, this provision

The proposed structural arrangements for the financing of the underground mining operations are inconsistent with the values contained in the Constitution.

7.8 In a country with a history such as that of South Africa, it is the responsibility of all mining companies to engage stakeholders on actual and potential human rights impacts. It cannot be ignored that mining-affected communities are living in social, economic and environmental crisis generated by the mining sector's drive to generate short term profits at the expense of communities' and workers social and economic rights, while demand for commodities is limited in a stagnant global capitalist economy. Gone are the days when mining contribution is measured only by its contribution to the gross domestic product, or royalties that it pays to the fiscus. Communities expect mining companies to become engines of socio-economic development of their areas. Such values align with the purpose of LEDA and CMR, and in the creation of Sefateng.

7.9 The proposed structural arrangement is financially exploitative of the mining communities. The Applicants ought to have a deeper understanding of shifting community and government expectations and

19.6 It is, with respect, disingenuous of the Applicants to boldly allege that the board has already signed the resolution necessary for the funding to be provided. The resolution was signed with certain conditions, namely, that there be:

19.6.1. A favourable outcome of the financial due diligence;

19.6.2. A mitigation of the risks identified by Norton Rose Fulbright; and

19.6.3. An approval of shareholders.

19.7 It was specifically requested by Ms Maroga for these conditions to be reflected in the resolution itself. She was, however, legally advised by the company's legal advisor (represented by Ms Jackie Midlane of Norton Rose Fulbright) that the resolution has to be unconditional but that the resolution would, however, be held in escrow by Norton Rose Fulbright until such time that the conditions were met: only then would the resolution become effective. It was only on that basis that the resolution was signed by the directors of CMR. This is reflected under item 3.23.7 of the minutes of the meeting held on Wednesday the 5th of June 2019. The minutes are attached hereto and marked as Annexure "KN6".

19.8 It is very concerning that to date none of the issues raised seem to be worthy of the attention of the other stakeholders, more particularly the Applicants who make no mention of them in the founding papers. There was never unity amongst all of the directors, various concerns have always been raised which to date remain. A letter of concern by Ms Maroga to the Sefatang Board, dated 19 August 2019, echoes this state of disunity and uncomfortability. In her letter she *inter alia* addressed the following:

> *"...*
>
> *My concern for the underground mining project was on condition that the legal and commercial terms were found to be favourable for Sefateng, post finalization of the legal and financial review commissioned by the Board. I am comfortable that the legal risks that were identified by Norton Rose during the legal review were reasonably mitigated. Unfortunately I remain unconvinced that the commercial benefits for Sefateng and ultimately its shareholders including the 3 Trusts as minorities are fair and just.*
>
> *I remain of the view that the affairs of the company are being run without regard to its profitability...*

*...I have raised my biggest concerns, especially at the audit committee, that there is a significant risk and possibility that the company will make a loss over the life of mine which will financially and legally expose the company and its Directors.*

...

*The opencast operations have also not generated any return to shareholders and this also needs urgent attention..."*

19.9 The letter is attached hereto and marked as Annexure **"KN7"**.

20.

AD PARAGRAPH 17 THEREOF

20.1 It is correct that CMR had knowledge of this project, since late 2015. As indicated in the introductory paragraphs, CMR and the directors serving on the SEFATENG Board did not fully appreciate the consequences of what was intended.

20.2 As indicated, after 4 years of open cast mining, SCM has not made any profit that could be used to distribute to the shareholders or to uplift communities, as is the intention of LEDA and CMR. In fact, CMR's loan over R100 million to get the open cast mining underway has not even been repaid.

21.

AD PARAGRAPHS 18 AND 19 THEREOF

CMR is aware of the content of the shareholder's agreement. For the reasons as set out above, the provisions of the shareholder's agreement are not applicable to the present matter. I am advised that full legal argument on these aspects shall be addressed to the Honourable Court.

22.

AD PARAGRAPH 20 THEREOF

Sefateng was formed to give effect to the social and upliftment obligations of LEDA and CMR. The process to achieve this would be for Sefateng to exploit the mineral resources for the benefit of the community. There simply has been no meaningful benefit flowing from a considerable amount of chrome being mined over the last four years.

23.

AD PARAGRAPH 21 THEREOF

The intention of mining has been known for some time. The consequences of the underground mining, as reflected above does not, however, meet the objectives of LEDA and CMR. The only people who will really benefit from the mining activities are Mr Blaauw and his connected parties.

24.

AD PARAGRAPH 22 THEREOF

This is correct.

25.

AD PARAGRAPH 23 THEREOF

This cannot be correct. The financing conditions are not in any way favourable for Sefateng. It cannot be expected for CMR to agree to an unequitable financing structure at the prospect of jobs and tenders. Such an agreement would perpetuate the very oppressive historic narrative that the majority of South Africans are not entitled to substantially and meaningfully benefit from

the vast mineral riches which come from their land. It simply cannot be acceptable that even after the failure of the open cast mining that a small minority remain the significant beneficiary of the mining regime which is proposed to take place underground. I am advised that it will be submitted that the Court have regard to the systematic nature of the inequalities in reading the Applicants paragraph under reply.

26.

AD PARAGRAPH 24 THEREOF

26.1 This is factually inaccurate, if not disingenuous. CMR was made aware of the early works in March of 2019 and It was always clear that the early works were being conducted without permission and at their own risk, to the knowledge of the parties concerned, certainly through Mr Blaauw. At no stage did I or the Board of Sefateng approve of these early works.

26.2 The Sumdev agreement had not yet become operational and there was no basis for any expenditure to be incurred in accordance with the provisions of the Sumdev agreement.

28.3 The Applicants were not at any stage assured of any commercial operations in future. CMR, nor Sefateng can, therefore, not be held responsible for any of the purported financial losses in this regard. It was the greed of the parties concerned in attempting to exploit the resources as fast as possible, without any conractual right that has led to the "problem" that now is given as a reason for both urgency and a basis that the relief be granted.

27.

AD PARAGRAPH 25 THEREOF

This is not correct. To the contrary, Sefateng would thrive if the Sefateng Underground Project did not proceed. This would enable it to procure a more equitable and profitable finance structure for the underground operations. The financing sought by way of this application is not the only manner in which mining operations underground may take place at the Sefateng mine.

28.

AD PARAGRAPHS 26 AND 27 THEREOF

28.1 As has been already illustrated, from as far back as 6 June 2019, the Applicants would have been aware that there was serious discomfort in concluding the sought financial agreements.

28.2 Moreover, in November of 2015, this discomfort already reared its head when Ms Maroga sought to ensure that the minutes of the meeting held on 23 November 2015 reflected her concerns regarding the underground project. Her email dated 23 November 2015 already attached as Annexure **"KN5"**.

28.3 I reference in part her concerns from the aforementioned email:

> *"...Are you aware of any mines with similar arrangements to the ones we are proposing?*
>
> *...Particularly as we do not know and can neither estimate the results of the bankable feasibility study for us to reasonably estimate how long it will take to repay the capital, without having done a proper life of mine financial evaluation."*

28.4 **The feasibility studies have to date not been forthcoming in order to address these concerns.**

28.5 The context within which the R6 billion was raised was when Dr Lekota, the Chairperson of LEDA, communicated on 9 October 2019, that in actual fact, the project is expected to realise revenue of over approximately R18 billion. These projections were based on specific renumbers and assumptions. Such number was not simply grabbed out of the air. It is a realistic return.

28.6 The R430 million referred is a subjective figure which is still a matter of contention in the Sefateng Board. The concern relating to the subjectivity of this financial return has been discussed several times in the audit committee of the Sefateng Board. Ms Maroga confirms so in her confirmatory affidavit attached hereto and marked as Annexure "KN8".

28.7 The actual financial model presented indicates a return of R330 million after tax. This is before factoring the cost of employing a full time CEO, CFO and other resources already approved by the Sefateng Board as the audit committee recommended. This can be estimated at R100 million over 20 years, before even factoring inflation. Reducing the estimated

profit to R200 million. The R200 million will be completely "wiped out" once inflation is factored in to all the items in the financial model, resulting in the valuation of the model being negative. This concern was also raised by our financial advisors that reviewed the model (Fieldstone).

29.

AD PARAGRAPHS 28 TO 32 THEREOF

29.1 The allegations contained herein are denied. The context within which they are dealt has been dealt with in the preceding paragraphs as well as in the preamble to the seriatim response. I request that those remarks be incorporated herein as if specifically traversed.

29.2 In the meeting held on 29 April 2019 the financial model of the underground project was presented to the Board by Mr A VanHeerden ( RBA/ SCVD CEO). After the presentation the Board requested for the financial model for the life of mine to be provided to the Board of Directors of Sefateng. It was agreed that a separate meeting for the review of the financial model be requested, after which the Board of Directors would jointly consider the agreements based on the financial model.

29.3 The special meeting of the audit and risk committee was held and the financial model discussed. Mr Clive Stewart, the Business Development

Manager for Traxys, who developed the financial model of the project presented the financial model to the committee and attendees. In that meeting the members of the audit committee requested to see the assumptions that informed the financial model. The committee was not happy with certain items in the model including additional costs for stopping tonnages and a R2.4 billion sustaining capex in particular as this was never part of the Sumdev agreement.

29.4 The audit and risk committee specifically noted that the cost of the development of the mine (which was R760 million) had been agreed by the Board, and with the new sustaining Capex, a further R2.4 billion, the cost has increased significantly without further approval of the Board.

30.

AD PARAGRAPH 33 THEREOF

The content herein is noted.

31.

AD PARAGRAPHS 34 TO 37 THEREOF

The allegations contained herein are expressly denied. As has been already illustrated, the SHA is not applicable to CMR in the context of this application.

32.

AD PARAGRAPH 38 THEREOF

This is admitted.

33.

AD PARAGRAPHS 39 TO 53 THEREOF

This whole history is irrelevant for present purposes. It appears that the Applicants are attempting to simply create atmosphere and suggest we have not acted properly. At every turn it appears that Bolepu and it associated parties are and have been attempting to strong-arm CMR and Sefateng to comply with their profit seeking activities.

34.

AD PARAGRAPHS 54 TO 59 THEREOF

34.1 The relevancy of the SHA in the context of this application is denied. As already indicated and shall be argued at the hearing of this application, the SHA is not applicable, as the application before the Honourable Court relates to the capital requirements of the borrower and not Sefateng's capital requirements.

34.2 I request that paragraphs 5.1.12 to 6.1.8 of this Answering Affidvait be incorporated herein.

34.3 CMR cannot reasonably be required to provide security in respect of obligations which it is not a party to. To be required to do so would be tantamount to unfairly prejudicial, unjust or inequitable conduct. This would certainly be an impairment in the probity with which Sefateng's company affairs are being conducted. This is a visible departure from the standards of fair dealing and a violation of the conditions of fair play on which every shareholder is entitled to rely.

34.4 In this regard and by way of the Applicants conduct, the value of CMR's shareholding value is being seriously diminished or jeopardised by reason of unfair, unjust or inequitable conduct on the part of those who have managed to exercise control of Sefateng.

34.5 The prejudicial inequity and unfairness lies in the effect of the conduct of the Applicants in seeking to impose obligations which would be detrimental to the financial interests of CMR.

35.

AD PARAGRAPH 60 THEREOF

While it is indeed so that the purpose of Sefateng is to mine for chrome ore it is imperative that it be understood that this purpose does not mean that the mining purpose is at the cost of all the other governance, constitutional and social responsibilities. The objective to mine cannot and should not supercede other objectives, more especially not the objectives of social upliftment and equity

36.

AD PARAGRAPHS 61 TO 72 THEREOF

36.1 Save to deny the purpose and intention with which the mining right was obtained, the remainder of the allegations contained herein are noted.

36.2 I wish at this stage to point out that CMR's concern is not that underground mining operations at the Sefateng mine are to take place. Its concern is with the oppressive terms within which the operations are proposed to take place.

36.3 Moreover, there is a suggested increase of R60 per ton which is just a mechanism or formula to enable Sefateng to repay a loan estimated at R2.4 billion for sustaining capex that was not in the initial Sumdev agreement. The only additional return is R100mil over the 20 years. This is after the directors of CMR requested for an adjustment in the return.

37.

AD PARAGRAPH 73 THEREOF

I have not been placed in possession of the Notice of Amalgamation. I am advised that a notice requesting the production of such document will be filed so that it may be inspected. In the circumstances, I can only take note of the averment.

38.

AD PARAGRAPHS 74 TO 77 THEREOF

38.1 The allegations contained herein are noted with the following remarks.

38.2 The balancing of interests does not favour the procurement of the currently proposed financing structure. The SUMDEV agreement was

entered into with the expectation that any transactions would be beneficial to the parties. This is currently not the case.

38.3 The underground mine and the financial capacity to mine it cannot be at all costs. The Applicants seek to attempt to create an atmosphere of desperation. Whilst it may indeed be of great importance for them in particular, for the mining to take place, the terms have to be favourable to the parties. More especially, when the entire life of a mine is being committed. It would be more prudent to advance with caution than to hasten to conclude a transaction, notwithstanding its complexities and dynamism. It is important to bring to the Court's attention paragraph 2.2.3 of the SUMDEV agreement, as the version placed before the Court by the Applicants does not contain this clause. It provides that one of the conditions must be the financial viability of the feasibility study. This carries a lot of weight in that viability is not just on geology outcomes but also on the financial viability of the project. There is no consensus within the Board of Sefateng on this particular issue.

39.

AD PARAGRAPH 78 TO 79 THEREOF

39.1 The content herein is denied. While there may not at this stage be alternative funding proposed, CMR is almost as certain as the

Applicants that favourable funding for Sefateng can be procured. The Respondents cannot be held ransom to conclude oppressive terms with Nedbank at the threat of facing liquidation.

39.2 CMR, having the best interests of Sefateng in mind, will work tirelessly to ensure that the company is successful.

40.

AD PARAGRAPH 80 THEREOF

The content herein is denied and already dealt with directly above in the preceding paragraph.

41.

AD PARAGRAPHS 81 TO 82 THEREOF

We have no knowledge of these figures We have dealt above with the issue of the early works and refer the Honourable Court thereto. The proposed income is actually an insult to Sefateng as has been dealt with above.

42.

AD PARAGRAPHS 83 THEREOF

The content herein is denied in so far as it is inconsistent with my remarks on the inapplicability of the SHA.

43.

AD PARAGRAPHS 84 TO 88 THEREOF

43.1 CMR cannot in good conscience be required to sign the project finance documents. The Sefateng Board was only informed for the first time of a proposed loan between Nedbank and RBA in a meeting held on the 12th of March 2019. The Board was also informed that the Bank requested for a separate company (other than RBA, which had a smelter as its asset) to be formed. Ms Maroga indicated that the Sefateng Board had never given a mandate for terms and conditions of any loans that would have an impact on Sefateng. In that meeting it was asked if the loan would have any implications for Sefateng and it was indicated that it would not.

43.2 It was also confirmed by RBA in that meeting that the Pledge of Shares related only to 45 % shareholding which excluded that of CMR and that CMR will not pledge its shares and it was explicitly said that the banks

understood this. The Chairman of the Board emphasized that all guarantees will be that of Traxys.

43.3 It was further indicated that government is the shareholder of CMR and effectively Sefateng and therefore even the bond over the mining right will be subject to approval by the government.

43.4 Ms Maroga specifically reminded the Board that Sefateng transferred the risk to RBA to be the company to obtain Funding hence it was agreed for Sefateng to be charged prime plus 2 % for RBA to go and get the loan. Assurance was also sought that there is no confusion on these terms of the terms of this loan.

43.5 I am not in possession of the minutes of this meeting. The audio recording of such meeting can be obtained from Sefateng.

44.

AD PARAGRAPHS 89 TO 91 THEREOF

44.1 The content herein is denied.

44.2 As already indicated, the resolutions signed were on condition that they would held in escrow until all of the necessary conditions were met.

44.3 At the meeting of 5 June 2019 the Board was informed that an additional scope of work to review the sustainability of the project for Sefateng was approved by the Audit committee. It cannot therefore be submitted that the Board approved this project whilst the financial due diligence was incomplete.

44.4 There was also never any withdrawal of approval. The withdrawals referred to are in relation to the subcontracting of Murray & Roberts. The minutes of the meeting wherein this took place are attached hereto and marked as Annexure **"KN5"**.

45.

AD PARAGRAPHS 92.1 TO 92.3 THEREOF

45.1 The deponent emphasizes the fact that some of these concerns were raised by CMR appointed Directors. The truth of the matter is that the entire Sefateng Board took the decision.

45.2 What it does, however, demonstrate is that the CMR Directors, acting in the interests of Sefateng, were the only people who were properly considering the legal and financial implications of the Sumdev Agreement for Sefateng itself.

45.3 What is important to note throughout the founding affidavit and what has been stated in the Answering Affidavit, is that at no time did the Bolepu appointed directors, under the leadership of Mr Blaauw, ever challenge, seriously investigate or attempt to clarify any issue relating to this entire structure. The reason we now believe that to be case, is that Bolepu was going to benefit handsomely through its relationship with the other associated parties, as dealt with above in these papers already.

45.4 It is correct that a financial due diligence was conducted. As previously indicated, Fieldstone was appointed to perform a review of the financial model. This was for the Board to have an independent review of the commercial terms of the debt funding as well as finding with regards to the financial model. The report was issued in May 2019.

45.5 It must be noted that the review performed did not determine the profitability of the project. As was also already indicated, Fieldstone were unable to complete the due diligence due to limitation of scope which included time constraints and limitation of required information.

45.6 A decision was taken by the Audit committee that BDO had already reviewed the detailed financial model of RBA that was used to obtain funding , on behalf of Nedbank and it was best to utilize them to review the model to save time. Due to time constraints the audit committee accepted

the limited scope of work by BDO. The BDO report was presented to the audit committee on 8 August 2019. The minutes of the meeting are attached hereto and marked as Annnexure "KN9".

45.7 As per the minutes the audit committee still had reservations regarding the viability of the project and did not take a view recommending the project for approval of the Board but noted the report.

45.8 A Board meeting was held on 13 August 2019 to present the BDO report, however, the report was never presented.

45.9 CMR did not sign the agreements as averred in paragraph 92.3. This was corrected in the Board meeting held on 3 September 2019.

46.

AD PARAGRAPH 92.4 THEREOF

This meeting did take place, but the discussions relating to the funding arrangements between negotiations with Nedbank were in very broad terms and no real specifics were made known. In fact, we do not know exactly what the arrangements are that are in place between Nedbank and the borrower, as dealt with above.

47.

AD PARAGRAPHS 92.5 AND 92.6 THEREOF

We have dealt with this meeting at length above and refer the Honourable Court thereto. When particularly referred to the minutes in terms whereof it was noted that the resolution be kept in escrow pending the conditions that had been agreed upon at the meeting.

48.

AD PARAGRAPH 92.7 THEREOF

There was a CMR Board Meeting on such date at which a presentation was presented at which Mr Blaauw was present. That, however, was not the main purpose of that Board meeting on the day, since we had a number of other issues to discuss and several other presentations that took place.

49.

AD PARAGRAPH 92.8 THEREOF

49.1 What is significant is that the deponent simply glosses over the events that transpired before the "*Finance Agreements*" were signed. First of all, the deponent is completely vague as to what finance agreements

were signed and they are not annexed to the papers and we invite the Applicants to annex such documentation to their replying affidavit.

49.2 Furthermore, on 13 August 2019 and before the signing of these financial agreements, a special meeting of the Board of Directors took place at Traxys' office in Bryanston. I annex hereto as Annexure **"KN10"**, a true copy of the Minutes of such special meeting.

49.3 The discussions and what transpired at this meeting is of great significant in the events that have taken place and in showing why the Applicants, apart from all of the other reasons already dealt with above, are simply not entitled to the relief they seek.

49.4 In such minutes, Paragraph 2.1 records that the Agenda, after having been discussed there were matters that the directors did not unanimously agree on. This related to the issue of the signing of the financial agreements.

49.5 It is noted in particular in Paragraph 2.1.2 of the minute that inter-directed disagreements arose, at sometimes to such an extent that directors left the meeting due to such disagreements.

49.6 Again, the Board was put under pressure to go and sign the documentation and it was then stated that there was a time slot that

had been set apart for the signing ceremony of the documentation for the underground project at Allan Ovary Attorneys. At that stage, the Board was also informed that the majority shareholder had not fulfilled the conditions precedent.

49.7 Ms Jackie Madlan of Norton Rose was also present at the meeting and she stated that as agreed by the Board Resolution of 5 June 2019, the resolution was subject to the approval of all shareholders and reminded the directors that each shareholder would be required to provide a resolution authorising Sefateng to enter into the agreements. CMR had not passed such a resolution, which are the resolutions that are now attempting to be forced upon CMR.

49.8 Paragraph 2.1.12 of the minutes confirms that the Board in the 13th of August meeting agreed that the Sefateng Board resolution taken on 5 June 2019 was in place and the conditions that the shareholders had to independently approve the Sefateng actions and provide the relevant resolutions and authority was reiterated.

49.9 Ms Maroga added that according to her recollection there was a further condition that the commercial terms had to be favourable to Sefateng. Ms Maroga emphasised that the view of the profit that was anticipated for Sefateng was low and the commercial terms regarding the financial

model were not favourable to the company. I confirmed that there was still disagreement on the commercial terms being favourable to the company.

49.10 Ms Maroga also provided feedback that the original Sumdev Agreement was not favourable to Sefateng and that the communities would only be receiving approximately R250 000,00 on the figures available at the time.

49.11 It is clear from these minutes and the 5th of June minutes that it was a condition precedent for Sefateng to enter into the financial arrangements that all of the shareholders had to be in support of such an arrangement. It is clear that the majority shareholder, namely CMR is not in favour of the arrangement and as such the condition precedent for Sefateng to enter into any financial arrangements had not been met.

49.12 In these circumstances, it is submitted that it is not possible to simply compel CMR to enter into the agreements and pass the resolutions that are annexed to the Notice of Motion.

50.

AD PARAGRAPHS 93 THEREOF

It is clear that CMR was having difficulties with the fianancial and profit of the project and had specifically made the signing of the documents subject to each shareholder's approval. With respect, the questions and issues raised were in themselves indicative of the possibility that the necessary resolutions may not be provided.

51.

AD PARAGRAPHS 94 TO 98 THEREOF

51.1 The letter, Annexure "FA14" attached to the founding affidavit clearly and unequivocally records the correct facts and legal position. Mr Chepape had never been authorised to represent CMR in entering into any of the agreements and the moment LEDA become aware of it on behalf of both LEDA and CMR notified Sefateng of this fact. Accordingly, no legally binding document arose.

51.2 Mr Chepape went off on a frolic of his own and had simply no authority to do what he did.

51.3 The position remains clear that at all times Sefateng knew that the final approval of Sefateng's entering into the finance agreements was subject to each of the shareholders in Sefateng independently approving such arrangement. There was no foregone conclusion that this would in fact occur and the 5th of June 2019 resolution correctly records this fact as confirmed by Ms Jackie Midlane at the 13 August 2019 meeting.

51.4 The right therefore for Sefateng to enter into any finance agreements had been clearly and unequivocally determined by the Board of Sefateng and those conditions have not been met. CMR is not comfortable that it is in the best interests of Sefateng or CMR or the interests of LEDA to enter into and that Sefateng enter into these financial arrangements. This simple condition has not been met.

52.

AD PARAGRAPH 99 THEREOF

This is noted.

53.

AD PARAGRAPHS 100 AND 101 THEREOF

CMR does indeed support the project insofar as establishing an underground mine. What CMR's problems and objections are, which have been repeatedly dealt with above, is that the format of the project in its present form, its financial viability for Sefateng and Sefateng's shareholders and the exploitation of minerals without any true benefit for the community and the objectives of LEDA and CMR are contrary to the manner in which the underground project is proposed to be given effect to.

54.

AD PARAGRAPH 102 THEREOF

54.1 The letter was written with Nelson Pasha still stated as being representative of the Fourth Applicant.

54.2 Nowhere in the papers do the Applicants and in particular, Bolepu actually set out what the real job creation would be. Where the number of 2000 jobs comes from, is unknown.

54.3 The truth of the matter is that if a proper structure of the exploitation of the chrome is arranged, then the same number of jobs will be created, but considerable more benefits for not only the local communities, but the communities of Limpopo in general, as is the aim of LEDA and CMR. What we are dealing with is almost like the old colonial times where tribes where given some glass beads for vast assets and were told to be satisfied with that.

55.

AD PARAGRAPHS 104 TO 107 THEREOF

I have dealt with the manner in which this request was made during negotiations. I wish to record that Mr Blaauw and his associates simply refuse to talk to us thereafter and no further discussion on a possible profit share took place.

56.

AD PARAGRAPH 108 THEREOF

I reject the content of this paragraph.

57.

AD PARAGRAPH 109 THEREOF

The true motive for the demand has been set out in great length above. The underlining rationale is that the interests of the Limpopo people are being exploited at their cost as has been explained above.

58.

AD PARAGRAPHS 110 TO 112 THEREOF

This is correct.

59.

AD PARAGRAPHS 113 TO 114 THEREOF

The documents required herein are noted. I am advised that these documents ought to be treated in the same manner as those already dealt with.

60.

AD PARAGRAPHS 115 TO 125 THEREOF

60.1 I am advised to submit that the alleged consequences from the failure to sign the resolutions cannot outweigh the interests of the stakeholders as well as the broader public.

60.2 Further legal argument will be made at the hearing of this application in this regard.

61.

AD PARAGRAPH 126 THEREOF

I accept that these are the requirements, but submit to the Honourable Court that such requirements have not been met.

62.

AD PARAGRAPHS 127 TO 128 THEREOF

62.1 I am advised that the Applicants do not and have not shown a clear right to the interdict at all.

62.2 First of all, as dealt with above, the provisions of the 2014 SHA do not provide for this situation that the Applicants are attempting to force upon CMR.

62.3 As has been dealt with in depth above, CMR's mandate is one of the very reasons why CMR cannot support this project because the only economic development that is being sponsored through this project are those of Mr Blaauw's interests and the other associated companies in the Sumdev Agreement.

63.

AD PARAGRAPH 129 THEREOF

63.1 I have dealt with each and every one of these averments and allegations at the appropriate place in the affidavit and refer the Honourable Court to where we have dealt in depth with these matters above. I reject the content of this paragraph in its entirety where it conflicts with what has been stated previously.

63.2 The argumentative content of this paragraph is rejected and I am advised that full legal argument will be represented to the Honourable Court as has been already dealt with above.

64.

AD PARAGRAPHS 130 AND 131 THEREOF

The content of these paragraphs are rejected in totality and the Honourable Court is referred to what has been stated previously.

65.

AD PARAGRAPHS 133 AND 134 THEREOF

65.1 I disagree and dispute that severe prejudice will be caused to Sefateng. Sefateng will incur no new expenses should the Sumdev Agreement not be entered into or failed because the suspensive condition is not met.

65.2 In fact, this will create the opportunity for Sefateng to enter into a properly motivated, commercial and sensible agreement for the exploitation of South Africa's minerals for the benefit of the communities.

66.

AD PARAGRAPHS 135 TO 139 THEREOF

I deny that CMR is in breach of the 2014 SHA resolution and accordingly Clause 20 would not become operative.

67.

AD PARAGRAPHS 140 TO 144 THEREOF

67.1 I have dealt with urgency in depth at the start of this affidavit and refer the Honourable Court thereto. I reiterate again that any possible urgency has been created by the Applicants, in particular the First Applicant itself. The disputes and concerns of CMR and its directors have been known for many months and in fact, as long ago as late 2015.

67.2 In the circumstances, I pray that the application be dismissed with costs, such costs to include the costs consequent upon the employment of two Counsel.

DEPONENT

THUS SWORN TO AND SIGNED BEFORE ME AT Pretoria ON THIS, THE 6th DAY OF NOVEMBER 2019, THE DEPONENT HAVING ACKNOWLEDGED THAT HE UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, AND THAT THE CONTENTS THEREOF ARE TRUE, THAT HE HAS NO OBJECTION TO THE TAKING OF THE OATH AND THAT HE CONSIDERS THIS OATH TO BE BINDING ON HIS CONSCIENCE.

KRISTOFF HENDRI ROODT
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