

**ATLAS ASPHALT (PTY) LTD (IN LIQUIDATION)**  
**("the Company")**

**MASTER'S REFERENCE NUMBER : G209/08**

**REPORT OF THE JOINT LIQUIDATORS J F KLOPPER, T W VAN DEN HEEVER, E M MOTALA & K C MONYELA, IN TERMS OF SECTION 402 OF THE COMPANIES ACT NO 61 OF 1973 AS AMENDED TO BE SUBMITTED AT A SECOND MEETING OF CREDITORS, MEMBERS & CONTRIBUTORIES TO BE HELD BEFORE THE MAGISTRATE OF KEMPTON PARK ON WEDNESDAY 3 SEPTEMBER 2008 AT 9:00AM**

**ORDER OF THE COURT AND MEETINGS**

Nature of Liquidation	Application to Court-Witwatersrand Local Division of the High Court
Date of liquidation	31 January 2008
Date of provisional Order	N/A
Date of Final Order	4 March 2008
Provisional appointees	JF Klopper, TW van den Heever, EM Motala & KC Monyela
Date of 1 <sup>st</sup> meeting of creditors	30 July 2008
Final appointees	JF Klopper, TW van den Heever, EM Motala & KC Monyela

**GENERAL AND STATUTORY INFORMATION**

**Registrar of Companies**

- 1 According to the Registrar of Companies the company was incorporated under registration number 1998/002419/07

**Registered Address**

- 2 The registered address of the company is Deloitte & Touche House, 221 Waterkloof Road, Waterkloof, 0181

**Directors**

- 3 According to the Registrar of Companies consented to serve as directors:
- 3.1 Gerhardus Johannes Beukes Koen

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3.2 Adriaan Jacobus Lochner

3.3 Kodisang Ezekiel Wessie

4 It appears from our investigations that the records of the company do not correlate with that of the Registrar. According to the records of the company only the following persons were directors at the time of liquidation:

4.1 Kodisan Ezekiel Wessie

4.2 Konstant Ettiene Bruinette

**Share Capital**

5 The authorised share capital of the company is R1000 divided into 1000 ordinary shares par value shares of R1 each.

6 The issued share capital of the company is 100 ordinary par value shares of R1 each.

**Business of the Company**

7 The main business of the company was the supply of asphalt to the road construction industry.

**Auditors**

8 According to the Registrar of Companies Deloitte & Touche are the auditors of the company.

**STATEMENT OF AFFAIRS**

9 We have not been place in possession of a Statement of Affairs as required in terms of Section 363 of the Companies Act No 61 of 1973 as amended.

**SECTION 402(a)**

**FINANCIAL STATEMENT OF ASSETS AND LIABILITIES**

10 The following represents the assets and liabilities of the company at date of liquidation. Unless otherwise stated, these figures only represent estimates of the assets and liabilities and will change depending on the amounts of realisation of unsold assets and claims submitted for proof.

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<b>ASSETS</b>			
<b>IMMOVABLE PROPERTY</b>	<b>NOTES</b>	<b>AMOUNT</b>	<b>AMOUNT</b>
None			
<b>MOVABLE ASSETS</b>			
Plant & Equipment (sold)	(a)		15,500,000.00
Cash Found in the estate	(b)		30,000.00
Claims in favour of the estate	(c)		1,930,000.00
<b>TOTAL ASSETS</b>			<b>17,460,000.00</b>
<b>LIABILITIES</b>			
<b>Secured</b>			
Tosas (Pty) Ltd		11,350,000.00	
- Perfected Notarial Bond	(a)		
- Cession of Debtors	(c)		
<b>Preferent Creditors</b>			
Receiver of Revenue		Unknown	
Salaries		1,700,000.00	
<b>Concurrent Creditors</b>			
Estimated		10,000,000.00	
<b>TOTAL LIABILITIES</b>		<b>23,050,000.00</b>	
<b>DEFICIT</b>			<b>5,590,000.00</b>

**NOTES**

The statement of assets and liabilities must be read in conjunction with the following notes:

**Plant & Equipment**

- (a) On 7 May 2008 the Master of the High Court extended the Powers of the joint provisional liquidators, empowering them the sell, by public auction the plant and equipment.

**Cash on Hand**

- (b) The amount represents money standing to the credit of the company at the time of its liquidation.

**Claims in favour of the estate**

- (c) Of the amount reflected the liquidators have already collected R112, 742.00 to date and we regard the balance of the amount as collectable. The liquidators are investigating all aspects in this regard and if

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required an enquiry will be held in due course. A more comprehensive report will be circulated in due course.

*These figures do not take into account any costs of administration and are subject to change and/or modification.*

**SECTION 402 (b)**

**CAUSES OF THE COMPANY'S FAILURE**

- 11 We have not been supplied with the view of the directors on the reasons for the liquidation of the company.

From the information at hand it is apparent that the company had bound itself as surety and co principle debtor for the indebtedness of its sister companies, Black Top Surfaces (Pty) Ltd & Black Top Plant Company (Pty) Ltd. When neither of the companies could meet their mounting obligations to creditors, the failure of the company became unavoidable.

**SECTION 402(c)**

**REPORT TO THE MASTER IN TERMS OF SECTION 400(2) OF THE COMPANIES ACT**

- 12 It is not our intention at this stage to submit a report to the Master of the High Court. However, we are still investigating this aspect and if necessary, a detailed report will be submitted to the Master in due course.

**SECTION 402(d)**

**PERSONAL LIABILITIES OF DIRECTORS OR OFFICERS**

- 13 At this stage it is not known whether the former director or officer of the company can be held personally liable for the debts of the company. A report will be submitted, should it become necessary.

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**SECTION 402 (e)**

**LEGAL PROCEEDINGS**

- 14 We have no knowledge of any legal proceedings pending by or against the company, other than normal debt collecting.

**SECTION 402(f)**

**ENQUIRY**

- 15 But for the view expressed above with regard to the "*claims in favour of the estate*", the liquidators do not intend to hold an enquiry at present. Creditors will be informed if the liquidators decide to proceed with an enquiry into the affairs of the company.

**SECTION 402(g)**

**BOOKS AND RECORDS**

- 16 We have taken control of the books and records found at the offices of the company.

**SECTION 402 (h)**

**PROGRESS AND PROSPECTS OF WINDING UP**

- 17 The joint liquidators have sold all the movable assets of the company and all cash on hand has been collected.

The joint liquidators will continue to collect outstanding debts.

**ESTIMATED DIVIDEND**

- 18 It appears at present that only the secured and preferent creditors are to receive an award. The liquidator have as yet not received notification from the South African Revenue Services of the extent (if any) of their claims.
- 19 The joint liquidators will advise concurrent creditors if the prospect of a dividend herein arises.

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**SECTION 402(i)**

**MATTERS REQUIRING THE FURTHER DIRECTIONS OF CREDITORS**

20 Such directions as required of creditors are contained in the draft resolutions numbers 1 – 14 which is submitted for consideration and adoption by the creditors at the second meeting of creditors in conjunction with this report. Creditors are requested to adopt these resolutions to enable the administration of the company in liquidation to continue.

SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 2008

\_\_\_\_\_  
**J F KLOPPER**

\_\_\_\_\_  
**T W VAN DEN HEEVER**

\_\_\_\_\_  
**E M MOTALA**

\_\_\_\_\_  
**K C MONYELA**

**JOINT LIQUIDATORS**

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**RESOLUTIONS SUBMITTED AND ADOPTED AT THE SECOND MEETING OF CREDITORS HELD BEFORE MAGISTRATE KEMPTON PARK, ON WEDNESDAY, 3 SEPTEMBER 2008 at 9:00 AM**

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**RESOLVED THAT:**

- 1 The report of Liquidator or Joint Liquidators, as the case may be, hereinafter referred to as (the Liquidator"), as submitted be received and adopted and all his actions referred to therein be and are hereby confirmed, ratified and approved.
- 2 All actions of whatsoever nature heretobefore taken by the Provisional Liquidator and/or Liquidator be and are hereby confirmed, ratified and approved.
- 3 The Liquidator be granted the authority and is vested with all the powers mentioned in Section 386(4)(a) – (i) of the Companies Act No 61 of 1973, as amended, such powers to be exercised at his sole and absolute discretion.
- 4 The Liquidator be and is hereby authorised in his sole and absolute discretion to:
  - 4.1 Take legal advice on any question of law affecting the administration and distribution of the company;
  - 4.2 Institute or defend on behalf of the company any action or other legal proceedings of a civil nature for the recovery of monies due to the company or otherwise and subject to the provisions of any law relating to criminal procedure, institute any criminal proceedings;
  - 4.3 Hold any enquiry into the affairs of the company and/or any matter relating thereto;
  - 4.4 Investigate and institute legal proceedings for the recovery of any voidable or undue preferences, voidable dispositions of property or any other impeachable transactions of whatsoever nature and to abandon same at any time;

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- 4.5 Write up the books of the company as may be required, and if necessary, to produce a balance sheet, audited or not, as at the date of liquidation, either for the purpose of investigating the affairs of the company, establishing the claims of creditors, or any other purpose.
- 5 The Liquidator be and is hereby authorised in his sole and absolute discretion to employ and engage the services of attorneys and/or counsel (senior and/or junior) and/or accountants and/or bookkeepers and/or any employee of the insolvent and/or recording agents and/or any other person who in the sole discretion of the Liquidator may be of assistance in the winding-up of the company in relation to any matter referred to in 4 above and further to pay all the costs thereof of whatsoever nature out of the estate as costs incurred in the liquidation.
- 6 The Liquidator be and is hereby authorised to collection any debts due to the company and for the purpose thereof to sell or compound or compromise any of these debts for such sum and upon such terms and conditions as he in his sole discretion may deem fit, and to accept any part of the debt in settlement thereof, and to grant an extension of time for the payment of any such debt, and to abandon any debt which he in his sole discretion may deem to be irrecoverable.
- 7 The Liquidator be and is hereby authorised to dispose of any movable and immovable property of the company, whether in his possession or under his control now or to come into his possession or under his control in the future by public auction, private treaty or public tender upon such terms and conditions as he in his sole and absolute discretion shall determine and to abandon any such assets for which he can find no purchaser or abandon them to a secured creditor at the value placed thereon by such creditor or at such value as is agreed upon by the Liquidator and the creditor if such creditor's claim is secured by such assets and to sign all such documents as may be necessary to give effect to such disposition.
- 8 The Liquidator be and is hereby authorised and empowered in his sole discretion to compromise and admit any claim against the company of whatsoever nature and howsoever arising and whether disputed or not and whether actual, contingent, prospective, conditional, unconditional, assessed, unassessed, liquidated or unliquidated as a liquidated claim in terms of Section 78(3) of the Insolvency

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Act No 24 of 1936 as amended, read with Section 339 of the Companies Act No 61 of 1973, as amended, at such amount as may be agreed upon by the Liquidator, provided that proof thereof has been tendered at a meeting of creditors.

- 9 The Liquidator be and is hereby authorised to make application for the destruction of books and records of the estate six months after the confirmation of the Final Liquidation and Distribution Account.
- 10 The Liquidator be and is hereby authorised to perform any act or exercise any power for which he is not expressly required by the Companies Act No 61 of 1973, as amended, to obtain the leave of the Court.
- 11 The Liquidator be and is hereby authorised to submit to the determination of arbitrators any dispute concerning the company or any claim or demand by or upon the company.
- 12 The Liquidator be and is hereby authorised to carry on or discontinue any part of the business of the company insofar as may be necessary for the beneficial winding-up thereof.
- 13 The Liquidator be and is hereby authorised to exercise *mutatis mutandis* the powers conferred upon a Liquidator by Section 35 (uncompleted acquisition of immovable property before liquidation) and 37 (effect of liquidation upon a lease) of the Insolvency Act No 24 of 1936, as amended, read with Section 339 of the Companies Act No 61 of 1973, as amended.
- 14 The further administration of the affairs of the company be left entirely in the hands and at the discretion of the Liquidator.

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**q.q. CREDITORS**