

HELDERBERG LABORATORIES CC
("the Close Corporation")

REGISTRATION NUMBER : CK 1994/015810/23

MASTER'S REFERENCE NUMBER : C218/2005

REPORT BY THE JOINT LIQUIDATORS JOHANNES FREDERICK KLOPPER *and* RAYMOND DAVID FENNER, IN TERMS OF SECTION 79 OF THE CLOSE CORPORATION'S ACT, NO. 69 OF 1984, ("THE ACT"), TO BE SUBMITTED AT A FIRST MEETING OF CREDITORS TO BE HELD BEFORE THE MAGISTRATE, SOMERSET WEST, ON THURSDAY, 11 AUGUST 2005 AT 09H00

INTRODUCTION AND MEETINGS

The Close Corporation was placed under liquidation by an Order in the High Court of South Africa (Cape of Good Hope Provincial Division) on 11 May 2005 pursuant to an application by Sola Technologies (Pty) Limited under Case Number 5742/2004.

The Master of the High Court, Cape Town, appointed Johannes Frederick Kloppe and Raymond David Fenner as Joint Liquidators as per Certificate of Appointment Number C218/2005 dated 27 May 2005.

The Provisional Order of Liquidation was made final on 08 July 2005.

FORMATION AND HISTORY OF THE CLOSE CORPORATION

It appears from documentation lodged that the Close Corporation was incorporated in terms of the Act under Registration Number CK1994/015810/23 with its registered address situated at 86 Bree Street, Cape Town, Western Cape, and its principal place of business situated at Cloetenburg Medical Centre, Corner of Fagan and Andries Pretorius Streets, Somerset West, Western Cape.

It appears from our investigations that the two members of the Close Corporation as at date of liquidation were:

- Michele Celeste Hlava;
- Andre Jean van der Merwe.

The Close Corporation conducted business as an optometric laboratory in the Western Cape and was part of a group of associated companies and close corporations controlled either directly or indirectly by Michael Hlava. This group comprised of:-

Eye Site Western Cape Inc;
 Eye Site Boland Inc;
 Eye Site Gauteng Inc;
 Optical Eyes Sandton CC;
 Westland Optique (Pty) Limited;
 False Bay Optical CC;

REPORT IN TERMS OF SECTION 79 OF THE ACT

SECTION 79(a) : ASSETS AND LIABILITIES

The following represents the assets and liabilities of the Close Corporation as at date of liquidation based on the application for liquidation and information provided by the members.

ASSETS	AMOUNT {R}	AMOUNT{R}
Movable Property:		
Furniture and equipment valued at		28 895,00
SUB-TOTAL		R28 895,00
LIABILITIES		
Secured Creditors : none	R NIL	
Preferent Creditors : unknown at this stage	Unknown	
Concurrent Creditors : approximately	558 678,49	
Shortfall		R529 783,49
TOTAL	R558 678,49	R558 678,49

SECTION 79(b): CAUSES OF THE CORPORATION'S FAILURE

According to information at our disposal and investigations conducted, the Close Corporation's demise was as a result of the following:

The Close Corporation was part of a group of associated companies and close corporations. The group sold all the businesses prior to date of liquidation, but after the date on which the application for liquidation was issued. The Close Corporation was indebted to one of its creditors which debt was in dispute. The dispute was not resolved prior to date of liquidation.

The impact thereof was such that the Close Corporation failed to pay the amount in dispute and this constituted an inability to pay their debts.

An application for the liquidation of the Close Corporation was consequently applied for by one of the creditors.

SECTION 79(c): CONTRAVENTIONS AND OFFENCES : SECTION 400(2) OF THE COMPANIES ACT READ WITH SECTION 66 OF THE ACT

At this stage it is unknown whether the former members have contravened provisions of the Companies Act. The members have been requested to submit a Statement of Affairs. The books and records are alleged to have been kept properly but we have been unable to determine as yet whether the legal provisions as required in respect of the keeping of such records have been complied with. A report will be submitted should it become necessary.

SECTION 79(d) : LIABILITIES OF MEMBERS

At this stage it appears that the former members are not personally liable to the Close Corporation:

- 1 on the ground of breach of trust or negligence;
- 2 to make repayments to the Close Corporation in terms of Section 70(2) or (3) or Section 71(1) or (2) of the Act;
- 3 to either a creditor of the Close Corporation or to the Close Corporation itself.

SECTION 79(e) : LEGAL PROCEEDINGS

We have no knowledge of any legal proceedings pending or threatened by or against the Close Corporation as at date of liquidation save for actions relating to the recovery of debt caused by the liquidation of the Close Corporation.

SECTION 79(f) : ENQUIRY INTO FORMATION AND FAILURE

Based upon the information available to us at this stage, it appears that an enquiry will be necessary with regard to the formation and failure of the Close Corporation.

SECTION 79(g) : BOOKS AND RECORDS

The books and records relating to the Close Corporation's affairs in terms of Section 79(g) of the Act have not yet been handed to us.

SECTION 79(h) : DIVIDEND PROSPECTS AND FURTHER ADMINISTRATION

It is evident from the assets and liabilities reflected above that concurrent creditors will benefit from the sale of the movable assets.

SECTION 79(i) : MATTERS REQUIRING FURTHER DIRECTIONS OF CREDITORS

Such directions as required of creditors are contained in the draft resolutions which are submitted for consideration and adoption by the creditors at this meeting in conjunction with this report. Creditors are requested to adopt these resolutions to enable the administration of the Close Corporation in liquidation to be continued with and finalised.

GENERAL

1. In the light of recent criticism involving Liquidators' fees and a judgement in the Supreme Court of Appeal handed down in April 2004 and reported in January this year, we deem it appropriate to bring to your attention our view that the Master of the High Court must tax Liquidators' fees in accordance with the tariff as is provided for in terms of Section 384(1) of the Companies Act, but having done so, the Master may reduce or increase the amount arrived at by applying the tariff if, in his or her discretion, there is "good cause" to do so.
2. The dominant provision of the aforesaid judgement is that the remuneration to which a Liquidator is entitled is remuneration for work or services rendered, not a set commission, and that it must be reasonable.
3. The tariff serves as a point of departure for the determination of the appropriate fee. However, once taxation is complete, the Master has a flexible discretion to increase or decrease the amount of remuneration arrived at by the previous application of the tariff.
4. The concept of 'good cause' is very wide and there is nothing in the Act which indicates that it should be interpreted so as to exclude any factor which may be relevant in determining what constitutes reasonable remuneration for a Liquidators' services in the circumstances of each case.
5. Obviously, what factors are relevant will vary from case to case, but may certainly include aspects such as:
 - 5.1. the complexity of the estate in question,
 - 5.2. the degree of difficulty encountered by the Liquidators in the administration thereof,

5.3. the amount of work done by the Liquidators **and the time spent by them in the discharge of their duties involved.**

6. If, in the administration of the estate particular difficulties are experienced by the Liquidators because of the nature of the assets or some other similar feature connected with the administration, this would undoubtedly constitute 'good cause' entitling the Master to increase the tariff remuneration.
7. In view of the above we hereby advise that we have resolved to keep time records of the work done by our staff in order to enable the Master to be guided along the above-mentioned guidelines and are in the process of writing up detailed time sheets of the effort and correspondence in this matter which will then be presented to the Master when submitting the next account in this matter.
8. We also wish to bring to your attention that the SCA held in the above-mentioned reported judgement that an hourly fee of R1 800,00 for a Liquidator based on the experience and qualifications of the parties in that matter would not be inappropriate. For your information we also advise that the charge out rates of our staff will be based on this rate as a point of departure and taking into consideration the qualifications of our staff.

SIGNED AT STELLENBOSCH ON THIS

DAY OF JULY 2005

.....
JOHANNES FREDERICK KLOPPER
JOINT LIQUIDATOR

SIGNED AT CAPE TOWN ON THIS

DAY OF JULY 2005

.....
RAYMOND DAVID FENNER
JOINT LIQUIDATOR

C/O INDEPENDENT TRUSTEES (PTY) LIMITED
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RESOLUTIONS TO BE SUBMITTED AND ADOPTED AT THE FIRST MEETING OF CREDITORS TO BE HELD BEFORE THE MAGISTRATE, SOMERSET WEST, ON THURSDAY, 11 AUGUST 2005 AT 09H00

RESOLVED THAT:

- 1 The report of Joint Liquidators or Provisional Joint Liquidators, as the case may be, hereinafter referred to as "the Joint Liquidators", as submitted, be received and adopted and all their actions referred to therein be and are hereby confirmed, ratified and approved.
- 2 All actions of whatsoever nature heretofore taken by the Provisional Joint Liquidators and/or Joint Liquidators be and are hereby confirmed, ratified and approved.
- 3 The Joint Liquidators 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 their sole and absolute discretion.
- 4 The Joint Liquidators be and are hereby authorised in their sole and absolute discretion to:
 - 4.1 Take legal advice on any question of law affecting the administration and distribution of the corporation;
 - 4.2 Institute or defend on behalf of the corporation any action or other legal proceedings of a civil nature for the recovery of monies due to the corporation 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 corporation 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;

- 4.5 Write up the books of the corporation 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 corporation, establishing the claims of creditors, or any other purpose.
- 5 The Joint Liquidators be and are hereby authorised in their 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 corporation and/or recording agents and/or any other person who in the sole discretion of the Joint Liquidators may be of assistance in the winding-up of the corporation 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 Joint Liquidators be and are hereby authorised to collect any debts due to the corporation 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 they in their 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 they in their sole discretion may deem to be irrecoverable.
- 7 The Joint Liquidators be and are hereby authorised to dispose of any movable and immovable property of the corporation, whether in their possession or under their control now or to come into their possession or under their control in the future by public auction, private treaty or public tender upon such terms and conditions as they in their sole and absolute discretion shall determine and to abandon any such assets for which they 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 Joint Liquidators 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 Joint Liquidators be and are hereby authorised and empowered in their sole discretion to compromise and admit any claim against the corporation 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 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 Joint Liquidators, provided that proof thereof has been tendered at a meeting of creditors.
- 9 The Joint Liquidators be and are 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 Joint Liquidators be and are hereby authorised to perform any act or exercise any power for which they are not expressly required by the Companies Act No. 61 of 1973, as amended, to obtain the leave of the Court.
- 11 The Joint Liquidators be and are hereby authorised to submit to the determination of arbitrators any dispute concerning the Close Corporation or any claim or demand by or upon the Close Corporation.

- 12 The Joint Liquidators be and are hereby authorised to carry on or discontinue any part of the business of the Close Corporation insofar as may be necessary for the beneficial winding-up thereof.
- 13 The Joint Liquidators be and are hereby authorised to exercise mutatis mutandis the powers conferred upon a Liquidator by Section 35 (uncompleted acquisition of immovable property before liquidation) and Section 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 creditors hereby consent to the Joint Liquidators' remuneration ("the remuneration") being taxed by The Master of High Court in terms of Section 384 of the Act **at the higher figure** of:
 - 14.1 the prescribed tariff as is contained in Annexure CM 104 to the Winding Up Regulations to the Act;
 - 14.2 the increased amount of work done by the Joint Liquidators in terms of the actual time spent by them or their staff in the discharge of their duties in the winding-up as is reflected on properly kept timesheets at the charge out tariff of the respective professional and administrative staff and which will be deemed to be good cause for the increase of such remuneration.
- 15 The remuneration referred to in 14 above may further be increased based on aspects such as:
 - 15.1 the complexity of the estate in question;
 - 15.2 the degree of difficulty encountered by the Joint Liquidators in the administration of the estate, and
 - 15.3 particular difficulties experienced by the Joint Liquidators because of the nature of the assets or some other similar feature connected with the winding-up.
- 16 The further administration of the affairs of the close corporation be left entirely in the hands and at the discretion of the Joint Liquidators.

q.q. CREDITORS