IN THE SUGAR INDUSTRY APPEAL TRIBUNAL
HELD AT DURBAN

In the matter between:

RCL FOODS SUGAR & MILLING (PTY) LTD, **A DIVISION OF RCL FOODS (PTY) LTD**	Applicant
and	
UMFOLOZI SUGAR MILL (PTY) LTD	First Respondent
THE UMFOLOZI MILL GROUP BOARD	Second Respondent
THE PONGOLA MILL GROUP BOARD	Third Respondent

JUDGMENT

1.

On 4 May 2018, the Applicant, **RCL:SUGAR AND MILLING (PTY) LIMITED** t/a **PONGOLA SUGAR MILL** (a division of **RCL FOODS LTD**), hereinafter referred to as "**RCL**" and the First Respondent, **UMFOLOZI SUGAR MILL (PTY) LIMITED**, hereinafter referred to as "**USM**" concluded a Cane Diversion Agreement (the "**AGREEMENT**"), in terms whereof it was agreed between them that **RCL** would divert sugar cane to **USM**, for the 2018 milling season.

2.

At the time that the **AGREEMENT** was concluded, **RCL** estimated that at the start of the Pongola 2018 milling season, the Pongola mill area crop estimate was approximately one hundred thousand tons more than planned production. At the same time, **USM** was of the opinion that it had additional capacity to crush sugar cane diverted by **RCL**. The parties believed that a sugar cane diversion from **RCL** to **USM** would allow the Pongola sugar cane growers to harvest their full crop for that season.

THE DISPUTE:

3.

Pursuant to the conclusion of the **AGREEMENT**, **RCL** began diverting sugar cane to **USM** and **USM** accepted the same. Within a relatively short period of time after the conclusion of the **AGREEMENT**, a dispute arose between **RCL** and **USM** pertaining to the quantity of sugar cane that could be diverted in terms of the **AGREEMENT**. **RCL** contended that **USM** was obliged to accept one hundred thousand tons of sugar cane and **USM** contended that it was only obliged to accept a quantity of sugar cane less than one hundred thousand tons, which precise quantity would be determined by its own crop estimates. By this time, some forty thousand tons of sugar cane had been diverted.

THE PROCEEDINGS:

4.

In consequence, **RCL** referred the dispute to the **SUGAR INDUSTRY ADMINISTRATION BOARD** (hereinafter referred to as "the **BOARD**") on 10 July 2018, in terms so it contended, of Clause 6.2 of the **AGREEMENT**, read in conjunction with the provisions of Clause 128 (d) of the Sugar Industry Agreement 2000.

5.

On 13 July 2019, the **BOARD** concluded that it had a limited statutory mandate in terms of the Sugar Industry Agreement, 2000 and that the powers vested in it by that agreement, precluded it from dealing with the dispute as such dispute fell outside the jurisdiction of the Board.

6.

RCL, as it was entitled to, thereafter:-

6.1. lodged an appeal to the Tribunal against those findings of the **BOARD**;

6.2. simultaneously, referred the dispute to the Tribunal in terms of the provisions of Section 35 of the Sugar Industry Agreement, 2000.

7.

Both the appeal and the referral were opposed by **USM**.

8.

The appeal and the referral served before the Tribunal at its hearing of the matters, on 12 September 2018 and 20 September 2018.

9.

During the hearing, **RCL** indicated that both the appeal and the referral centred on a proper interpretation of the **AGREEMENT** and that in essence, the referral was all that needed to be decided, with the appeal, in effect falling away. This position was accepted by **USM**, with the result that all that was then seriously argued were the matters germane to the referral, with argument as reflected in the appeal documentation and heads of argument pertaining to the appeal not being persisted with.

10.

That being so, the Tribunal was not called upon, nor did it, decide the merits of the appeal.

11.

In the referral, **RCL** sought relief identified in paragraph 52 of the referral, which, in essence required the Tribunal to determine whether **USM** was under an obligation, in consequence of the **AGREEMENT**, to accept up to a maximum of one hundred thousand tons of sugar cane from **RCL** for the 2018 milling season. It also sought relief that the costs and damages arising from the breach of the **AGREEMENT** which it alleged had been committed by **USM** in declining to accept up to a maximum of one hundred thousand tons of sugar cane be reserved for determination on a later date, after the conclusion of the 2018/2019 milling season. The First Respondent, which, as already indicated, opposed the referral, requested that the Tribunal dismiss the referral, with an order for costs because, so it contended, the

referral should be unsuccessful and, coupled with the appeal, was sloppy with allegations that were *mala fide* and vexatious.

12.

At the commencement of the hearing of the matter, **MS. NEL**, who represented **RCL**, indicated that it was the intention of **RCL**, to call oral evidence on the context in which the **AGREEMENT** was concluded. **MR. PITMAN**, who appeared for **USM**, recorded prejudice if he were to be directed to cross examine the proposed witnesses at that time. In consequence, the evidence in chief of two witnesses, **MR. WILLIAMSON** (a manufacturing executive at **RSL**) and **MR. SMALL** (a sugar cane Supply Manager at **RCL**), was heard, by consent, and the matter then adjourned for one week until 20 September 2018, when **MR. PITMAN** undertook the necessary cross examination and, in turn, called, **DR. WYNNE** (the Chief Executive Officer of **USM**) to testify on behalf of **USM**. Argument was then delivered by **MS. NEL** and **MR. PITMAN**.

RELEVANT CLAUSES OF THE AGREEMENT:

13.

During argument much time was spent by each of the parties on Clauses 2 and 3 of the **AGREEMENT**. The relevant Sub-Clauses of Clauses 2 and 3 are accordingly quoted hereunder:

"***2. INTRODUCTION***

2.1 The RCL Pongola mill area crop estimate at the start of the Pongola 2018 Milling Season was approximately 100 000 tons more than planned production plan. USM indicated that they have additional capacity to excess (sic?) Pongola cane, subject to the USM crop estimates. A cane diversion from Pongola to USM will allow the Pongola Growers to harvest their full crop.

2.2 RCL Pongola will exclusively divert sugar cane "out" to USM for the Pongola 2018 Milling Season and USM will accept such cane subject to clause 2.3, unless otherwise agreed to in writing by the parties.

2.3 USM guarantees to accept a maximum of 100 000 tons, unless otherwise agreed to in writing by the parties.

2.4 RCL Pongola and USM undertake to engage monthly to review the diversion progress, the RCL Pongola estimates and the USM and RCL Pongola milling performances.

2.5 …

2.6 …

3. CANE DIVERSION

The parties hereby agree as follows:

3.1 RCL Pongola will divert out the agreed diversion tonnage of cane for the Pongola 2018 Milling Season as rateably as is practically possible.

3.2 The quantity of cane to diverted will be agreed between the Cane Supply Manager at USM and the Cane Supply Manager at RCL Pongola ("the Manager") on a weekly basis. These agreed quantities are estimates and may be subject to change. The Managers shall meet monthly with a view to confirm the estimates, the logistical arrangements relating thereto and to confirm the administrative procedures relating to the cane diversion."

BRIEF SUMMARY OF THE EVIDENCE LED:

14.

MR. WILLIAMSON testified that **RCL** had approached **USM** when it had forty thousand tons of sugar cane that needed to be crushed. Sometime during February 2018 **RCL**'s sugar cane estimates increased and at that time it had approximately one hundred thousand tons of sugar cane to be crushed. **RCL** reached an agreement with **USM** to supply it with one hundred thousand tons of sugar cane guaranteed, but the wheels came off when **USM's** crop increased some time during June 2018. **RCL** believed that **USM** would simply cascade its excess sugar cane to the Felixton mill which turned out to be unable to receive it, and that the next mill to look to would be Gledhow. **MR. SMALL** testified that he would have weekly meetings with **RCL** to manage implementation of the **AGREEMENT** where estimates would be exchanged and discussed weekly. He testified that when **USM** estimates increased **DR. WYNNE** called for a meeting to discuss increased estimates, and that **DR. WYNNE** had advised that **USM** would need to decrease the amount of sugar cane in the agreement from one hundred thousand tons to forty thousand tons. **MR. SMALL** testified that on or about 8 July 2018 he was called by **USM**'s **MR. DLODLO**, on short notice, and was advised that **USM** could no longer accept sugar cane from **RCL** despite there being no agreement from **RCL** that the **AGREEMENT** would come to an end.

15.

USM led the evidence of **DR. WYNNE**, mainly to explain what was in his mind at the time of signing the contract. His testimony was that **USM** could not enter into an agreement that would cause prejudice to its growers; that Clause 2.1 made it clear that the agreement was

subject to the sugar cane estimates of **USM** growers; that **USM** could only crush up to a maximum of one million two hundred thousand tons; and that the diversion could not be to the disadvantage of **USM** growers**.** **DR. WYNNE** stated that at the time of signing the contract, his understanding was that **USM** could stop receiving sugar cane from **RCL** at any point as it had no commitment to receive one hundred thousand tons. In his mind the contract that he signed did not impose an obligation to accept any predetermined volume of sugar cane from **RCL**. He also stated that Clause 2.5 of the contract which required both parties to inform the Mill Boards and **SASA**, monthly, of their sugar cane diversions, gave them the freedom to vary the volumes of what they could accept from **RCL**.

16.

Much of the oral evidence led on discussions leading up to the signature of the **AGREEMENT** and is common cause. In our view, there is no particular meeting or discussion or event upon which the interpretation to be given to the **AGREEMENT** turns. It is common cause that the parties signed the **AGREEMENT** at the beginning of May; that initial indications at the beginning of 2018 were that **USM** had excess capacity and **RCL** had excess sugar cane; that as a consequence the **AGREEMENT** was concluded in order to secure the delivery of sugar cane by **RCL** to **USM**; and that to date **USM** has crushed forty thousand tons of sugar cane received from **RCL**.

17.

The dispute arises because **RCL** asserts that the **AGREEMENT** guarantees that **USM** is to crush one hundred thousand tons of its sugar cane, whereas **USM** contends that it was never understood by it that it had to accept one hundred thousand tons of **RCL**’s sugar cane and that this figure was always subject to **USM**’s crop estimates as envisaged in

Clause 2.1 of the **AGREEMENT**. Nothing in the oral evidence that was led by both parties assisted us in resolving this dispute.

18.

More helpful is the correspondence that formed part of the documents provided to us that tells a tale of what was in the minds of the authors and recipients thereto. Of particular relevance is the following correspondence:

18.1. As at 22 February 2018, **DR. WYNNE** communicated that **USM** had the capacity to crush all of the one hundred thousand tons of sugar cane from **RCL**.[1]

18.2. In an email dated 29 March 2018 **DR. WYNNE** refers to the 2018 diversions as being "*for 100 000 tons negotiated upfront for the full year*" and encourages the parties to enter into a more formal agreement rather than an exchange of letters.[2]

18.3. In an email dated 2 May 2018 sent two days before signature of the **AGREEMENT**, **DR. WYNNE** says to **RCL**'s **DEREK VAN NIEKERK** whose evidence was not led, that he was not sure whether he could get the **UMFOLOZI GROWERS BOARD** to sign the agreement as **USM**'s home estimate had increased and its growers wanted to finish early, but that he had every intention of honouring the verbal agreement. **DR. WYNNE**'s evidence was that this verbal

[1] Page A1.

[2] Page A2.

agreement was for **USM** to accept whatever sugar cane it could without any guarantees.

18.4. On 7 May 2018 and approximately three days after the signature of the **AGREEMENT**, **DR. WYNNE** wrote to the **USM** Mill Group Board and attached a signed copy of the **AGREEMENT**, stating that "*USM has signed up a guaranteed 100 000 tons with (RCL) with the option to increase this by agreement – clause 2.3*"[3].

18.5. By 19 June 2018 **DR. WYNNE** was looking at "*cutting back / terminating the inward diversion to USM*"[4] and had spoken to other mills to see who might be able to take the **RCL** excess sugar cane.

18.6. In a letter dated 28 June 2018 **DR WYNNE** confirmed that he had received preliminary Umfolozi sugar cane estimates that "*indicated a significant increase in the Umfolozi home mill cane crop. As a consequence, USM's spare milling capacity at the beginning of the 2018/19 milling season now appeared to be significantly eroded*." Later in this letter **DR. WYNNE** stated - "*USM is now seeking RCL…to agree to reduce the Pongola diversion to USM from 100 000 tons to 40 000 due to information pertaining to USM estimates and milling performance…*".[5]

[3] Page 73

[4] Page 81

[5] Page 83 - 86

18.7. By July 2018, specifically in his letter dated 10 July 2018, **DR WYNNE'S** position was clear that the reference in the **AGREEMENT** to a *"guaranteed 100 000 tons…does not mean that USM guaranteed to crush 100 000 of Pongola cane but rather that Pongola guaranteed to supply 100 000 tons of cane*."[6]

THE PRINCIPLES OF INTERPRETATION:

19.

The principles governing interpretation are now well established and have been recently summarised by the Supreme Court of Appeal.[7] That Court has recently held that it is "*not sufficient to merely regurgitate the relevant principles and to cite the leading authorities without actually applying them. It must be evident from the interpretive process itself that the principles have been applied*."[8]

20.

The principles of interpretation have been refined and consolidated in a number of Supreme Court of Appeal decisions. These principles and the discarding of certain previous principles are pre-eminently set out in:

[6] Page 96.

[7] **AUCTION ALLIANCE v WADE PARK 2018 (4) SA 538 (SCA)**

[8] Ibid at para 19.

NATAL JOINT MUNICIPAL PENSION FUND v ENDUMENI[9]

EKHURULENI METROPOLITAN MUNICIPALITY v
GERMISTON MUNICIPAL RETIREMENT FUND[10]

BOTHMA-BATHO TRANSPORT (EDMS) BPK v
S. BOTHMA & SEUN TRANSPORT (EDMS) BPK[11]

NOVARTIS SA (PTY) LIMITED v
MAPHIL TRADING (PTY) LIMITED[12]

21.

The pre-eminent features of interpretation established by this jurisprudence are:

21.1. Interpretation is an objective and unitary process. Context and text are considered in one process. The *"Golden Rule"*, which previously held sway in matters of interpretation, has now been jettisoned by the Supreme Court of Appeal in **BOTHMA-BATHO TRANSPORT (EDMS) BPK v S. BOTHMA & SEUN TRANSPORT (EDMS) BPK** (*supra)* at page 499, paragraph [12] of its judgment. That approach, which was urged upon us by **MS. NEL**, cannot be applied by us, for obvious reasons. The golden rule of interpretation in its application, required the literal meaning of a word or phrase in a contract or document to be ascertained and the interpreter to also have regard to the context in which the word or phrase was used with its interrelation to the contract as a whole, including the nature and purpose of the contract and to the background circumstances which explained the genesis and purpose of the

[9] 2012 (4) SA 593 (SCA)

[10] 2010 (2) SA 498 (SCA)

[11] 2014 (2) SA 494 (SCA)

[12] 2016 (1) SA 518 (SCA)

contract, that is to matters probably present to the minds of the parties when they contracted and then to apply intrinsic evidence regarding the surrounding circumstances when the language of the document was, on the face of it ambiguous, by considering previous negotiations and correspondence between the parties, subsequent conduct of the parties showing the sense in which they acted on the document, save direct evidence of their own intentions. is deceased.[13]

21.2. In rejecting that approach to interpretation, the Supreme Court of Appeal stated:

> *"The starting point remains the words of the document, which are the only relevant medium through which the parties have expressed their contractual intentions, the process of interpretation does not stop at a perceived literal meaning of those words, but considers them in the light of all relevant and admissible context, including the circumstances in which the document came into being. The former distinction between permissible background and surrounding circumstances, never very clear, has fallen away. Interpretation is no longer a process that occurs in stages but is 'essentially one unitary exercise'.*

21.3. Accordingly, in determining meaning, context is, if not everything, almost everything. Context does not distinguish between background and surrounding circumstances and no ambiguity is required to resort to context.

[13] According to the golden rule of interpretation the language in a document is to be given its grammatical and ordinary meaning unless this would result in some absurdity or repugnancy or inconsistency with the rest of the instrument (See Coopers and Lybrand & others v Bryant 1995 (3) SA 761 (A) at 767)

21.4. Common sense, purpose of provisions and commercial business sense (including a comparison of the outcomes of each interpretation) are integral to the process.

22.

NATAL JOINT MUNICIPAL PENSION FUND v ENDUMENI (*supra*) is appositely quoted and further elucidated in **BOTHMA-BATHO TRANSPORT (EDMS) BPK v S. BOTHMA & SEUN TRANSPORT (EDMS) BPK** (*supra*) [10]:

"*Interpretation*

[10] In Natal Joint Municipal Pension Fund v Endumeni Municipality the current state of our law in regard to the interpretation of documents was summarised as follows:

'Over the last century there have been significant developments in the law relating to the interpretation of documents, both in this country and in others that follow similar rules to our own. It is unnecessary to add unduly to the burden of annotations by trawling through the case law on the construction of documents in order to trace those developments. The relevant authorities are collected and summarised in Bastian Financial Services (Pty) Ltd v General Hendrik Schoeman Primary School. The present state of the law can be expressed as follows: <u>Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent</u>

> *purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective, not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation; in a contractual context it is to make a contract for the parties other than the one they in fact made. The inevitable point of departure is the language of the provision itself", read in context and having regard to the purpose of the provision and the background to the preparation and production of the document.*"

(Underlining - our emphasis)

23.

In the same vein are the **EKHURULENI METROPOLITAN MUNICIPALITY v GERMISTON MUNICIPAL RETIREMENT FUND** (*supra*), **NORTH EAST FINANCE (PTY) LTD v STANDARD BANK OF SOUTH AFRICA LTD**, 2013 (5) SA 1 (SCA) [24] – [25] and **NOVARTIS SA (PTY) LTD v MAPHIL TRADING (PTY) LTD** (*supra*) decisions.

24.

NOVARTIS SA (PTY) LTD v MAPHIL TRADING (PTY) LTD (*supra*) paragraph [27] is particularly useful and relevant.

"[27] I do not understand these judgments to mean that interpretation is a process that takes into account only the objective meaning of the words (if that is ascertainable), and does not have regard to the contract as a whole or the circumstances in which it was entered into. This court has consistently held, for many decades, that the interpretative process is one of ascertaining the intention of the parties — what they meant to achieve. And in doing that, the court must consider all the circumstances surrounding the contract to determine what their intention was in concluding it."

(Underlining – our emphasis)

25.

Finally it must be noted that, the Supreme Court of Appeal has accepted that a party's conduct in regard to the implementation of an agreement must also be consistent with the interpretation for which that party contends.[14]

ANALYSIS:

26.

Both **MS. NEL** and **MR. PITMAN** drew our attention to the need for us to place value on what was in the mind of the parties at the time of signing the contract.

[14] **COMWEZI SECURITY SERVICES (PTY) LTD V CAPE EMPOWERMENT TRUST LTD (759/11) [2012] ZASCA 126 (21 SEPTEMBER 2012)**

27.

It is important to understand what was in the minds of each of **RCL** and **USM** particularly in establishing what the parties understood by the phrase *“.... guarantees to accept a maximum of 100 000 tons…”* in Clause 2.3 of the **AGREEMENT**, to mean.

28.

It is this Tribunal’s view that from February 2018 **DR. WYNNE** was eager for **USM** to crush all of the one hundred thousand tons of excess sugar cane that **RCL** said it had, and by March 2018 was not content with just a letter confirming the arrangement but wanted a formal agreement to secure **RCL**’s excess sugar cane. And from the evidence that was led, that tonnage might have exceeded the one hundred thousand tons referred to, which possibly explains the wording of Clause 2.1 where the word *“excess”* is expressly used, although a word such as “accept” or “crush” which ought to have been inserted before it has been omitted. But interpreting that Clause in such a manner gives complete understanding of the thoughts in the mind of the parties to the contract, in the context in which they concluded the contract, and makes business sense and leads to a sensible interpretation. It explains why the parties agreed on the tonnage of one hundred thousand tons, with further quantities to be agreed upon, subject to **USM** crop estimates and why **USM** required **RCL** to exclusively divert one hundred tons of sugar cane to **USM**. **USM** obviously had in mind an opportunity of accepting sugar cane in excess of that quantity, if its crop estimates of sugar cane which had to be crushed at its mill, permitted this.

29.

In more than one instance, the **AGREEMENT** mentions one hundred thousand tons. It is difficult to imagine that this number did not bear any significance to the expectation of the

supply and acceptance of sugar cane by **RCL** and **USM** respectively, and thus quantify the obligation, in units, to a specific quantum to both parties. It cannot therefore be acceptable that the contract would be subject to whatever maximum **USM** decided.

30.

Clause 2.2 of the **AGREEMENT** reads "*RCL will exclusively divert sugar cane ''out'' to USM … unless agreed to by both parties*". The Clause prohibits **RLC** to supply its surplus sugar cane to any other mill. Such commercial arrangements are common to create some certainty for both the supplier and the recipient of a product. By prohibiting **RCL** from diverting sugar cane to any other mill, the clause logically creates an obligation to receive same by **USM** from **RCL**. It also creates a justifiable expectation from **RCL** that a certain volume of sugar cane will be accepted by **USM**. The question is how many tons of sugar cane are subject to exclusivity? In our view the answer would be found in Clause 1 of the **AGREEMENT**. Both parties know that there will be "*approximately 100 000"* tons of excess sugar cane. There is no reason to believe that the exclusivity would apply to any other number other than an approximate one hundred thousand tons. (For clarity, we deal with the meaning of "approximately one hundred thousand tons" below). Had the exclusivity been meant to refer to a different sugar cane volume, other than one hundred thousand tons, the parties would have specified that number. We therefore conclude that if **RCL** was obliged to supply approximately one hundred thousand tonnes exclusively to **USM**, **USM** was equally obligated to receive the same. If this were not the case, the exclusivity clause would make no commercial sense to **RCL**. We have difficulty, therefore, in accepting that the contract did not create a predetermined quantity to which the parties were obligated to.

31.

Whilst Clause 2.5 required both parties to notify their respective volumes of sugar cane diversions it is hard to accept the suggestion that such monthly sugar cane diversion volumes would mean an automatic amendment of the contract. Evidence was, correctly led, in our view, by a **RCL** representative that such monthly notifications are made and submitted as part of contract management.

MEANING OF APPROXIMATE:

32.

The Concise Oxford Dictionary (The New Edition of the 1990s) includes the following in defining ‘’approximate”: “*Fairly correct or accurate; near to the actual / near or next to / bring or come near (esp. in quality or number, etc.) but not exactly (approximates to*”.

33.

The argument that since Clause 1 of the **AGREEMENT** did not specify one hundred thousand tons in exact terms meant that none of the parties could be pinned to a specific number because approximate is not definite and cannot be sustained. It is however difficult to accept that forty thousand tons was anywhere near one hundred thousand tons. In our view, the tonnage in question has to be near to the one hundred thousand tons referred to. To hold otherwise would lead to an un-businesslike and insensible result and it would undermine the apparent purpose of the **AGREEMENT**, which is to enable the Pongola growers to harvest their full crop.

34.

DR. WYNNE's conduct after signature of the **AGREEMENT** is consistent with the interpretation for which we contend. Even after signature, **DR. WYNNE** writes of **USM** having signed up a guaranteed one hundred thousand tons with **RCL** with the option to increase. There is also no reference to an option to decrease this amount. More specifically and when it became clear that **USM** was no longer willing to accept any more sugar cane **DR. WYNNE** writes of **USM** seeking to agree to reduce the diversion from one hundred thousand tons to forty thousand tons. When asked to explain why this would be necessary if there was no guaranteed tonnage **DR. WYNNE** was unconvincing and we do not accept such explanation.

35.

We are firmly of the view that Clause 2.3 of the **AGREEMENT** must be interpreted to mean that **USM** agreed to accept one hundred thousand tons of sugar cane from **RCL**. By refusing to do so **USM** is acting in breach of its agreement with **RCL**.

ORDER:

36.

In the result, we make the following order:

36.1. **UMFOLOZI SUGARMILL (PTY) LIMITED** (the First Respondent in this referral), is obliged to accept the balance of sugar cane diverted by **RCL** (the Applicant in

this referral), up to a maximum of one hundred thousand tons, for crushing in the 2018 milling season and it is hereby directed to do so.

36.2. All issues of costs and damages arising from the breach, of the **AGREEMENT** concluded between the parties, by the First Respondent, are reserved for determination on a later date, after the conclusion of the 2018 milling season.

18 October 2018

J.Y. THOBELA-MKHULISI
Sugar Industries Appeals Tribunal
Tribunal Member

A.K. KISSOON SINGH SC
Sugar Industries Appeals Tribunal
Tribunal Chairman

B.W. NGUBANE
Sugar Industries Appeals Tribunal
Tribunal Vice-Chairman

T. MURRAY
Sugar Industries Appeals Tribunal
Tribunal Member