



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 15 December 2025

Status: Immediate

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Tongaat Hulett Limited (in business rescue) and Others v South African Sugar Association and Others (945/2024) [2025] ZASCA 190 (15 December 2025)

Today, the Supreme Court of Appeal (SCA) dismissed an appeal against the judgment of the KwaZulu-Natal Division of the High Court, Durban (the high court), with costs.

Tongaat Hulett Limited (THL), a major South African sugar producer, entered business rescue at the end of 2022 due to financial distress as part of its rescue plan. Under business rescue, a business rescue practitioner (a professional appointed to oversee the restructuring of a financially distressed company) was appointed to manage the process. THL's business rescue practitioners attempted to suspend payments that THL was required to make under the Sugar Industry Agreement (SI Agreement), which is a regulatory framework governing sugar sector levies and revenue-sharing.

To justify suspending these payments, the practitioners invoked section 136(2)(a) of the Companies Act 71 of 2008 (the Act), a provision that allows a business rescue practitioner to temporarily halt a company's obligations under pre-existing agreements (meaning contracts or private arrangements) during business rescue proceedings. However, the South African Sugar Association (SASA) and other stakeholders in the industry objected. They argued that THL's payment obligations under the SI Agreement were statutory obligations from the Sugar Act 9 of 1978 and the SI Agreement itself, not ordinary contractual obligations. Consequently, they contended, these duties could not be suspended like a typical contract under the Act.

This dispute led to court proceedings, ultimately reaching the SCA. The case centred on two main legal questions. First, does the SI Agreement qualify as an 'agreement' under section 136(2)(a) of the Act, such that THL's payment obligations could be temporarily suspended during business rescue? Second, if these obligations are considered statutory and not part of an 'agreement', does this distinction unfairly

discriminate or violate the equality rights in section 9 of the Constitution? THL argued that excluding statutory obligations from the rescue suspension power treats some creditors (such as regulatory bodies) differently from private creditors, potentially leading to unconstitutional discrimination.

Section 136(2)(a) of the Act allows a business rescue practitioner to suspend obligations arising from any pre-existing agreement during the period of business rescue, but this power applies only to contractual agreements and does not override statutory obligations. The key question was whether the SI Agreement, which is determined by the Minister under the Sugar Act and regulates the entire sugar industry, could be regarded as a contract or as subordinate legislation. Generally, an 'agreement' implies a mutual contract between parties, not duties imposed by law.

The SCA closely examined the nature of the SI Agreement. It found that, despite being called an 'agreement', it was in fact an instrument issued by the government and applied to the entire industry as a form of subordinate legislation. All sugar producers, including THL, are bound by its terms by operation of law, not by personal consent. The payment obligations (such as industry levies and redistribution payments) are therefore statutory obligations, meant to further public policy in the sugar sector, and not contractual debts that can be suspended by a business rescue practitioner.

On the constitutional issue, the SCA concluded that section 136(2)(a) does not unlawfully discriminate between types of creditors. The law distinguishes based on the source of the obligation – whether it arises from a private contract or from law – and not on the identity of the creditor. All creditors are treated equally if their claims are contractual; likewise, claims created by statute are treated the same, regardless of who the creditor is. The Court found this distinction to be logical and rational. Keeping statutory obligations enforceable during business rescue serves important public interests, such as maintaining industry regulation, protecting workers and suppliers, and supporting economic stability. Even if this policy sometimes limits the relief available to companies in business rescue, it is justified by the need to uphold regulatory frameworks like those governing the sugar industry.

As a result, the SCA ruled against THL. It held that THL's payment obligations under the SI Agreement could not be suspended during business rescue proceedings because these duties arise from law, not from a consensual agreement. The Court affirmed that this result is consistent with constitutional requirements, stating that considering statutory obligations as unsuspendable constitutes a rational legislative decision that upholds public interest and ensures equality before the law. Accordingly, THL's appeal was dismissed.

This decision sets an important precedent for how statutory obligations are treated during business rescue proceedings, reinforcing the priority of regulatory frameworks in South Africa's key industries.