

Tongaat Hulett judgment vindicates South African Sugar Association

By [Andrew Russell](#)

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Judge Vahed's judgment on the Tongaat Hulett application to suspend the miller's payment obligations arising out of the Sugar Industry Agreement, vindicates the South African Sugar Association (SASA) position that the Sugar Industry Agreement creates statutory, not contractual, obligations which are not overridden by the business rescue process under the Companies Act.



Source: © 123rf [123rf](#) The judgment on the Tongaat Hulett application to suspend its Sugar Industry Agreement payment obligations vindicates the South African Sugar Association says Andrew Russel, chairperson, SA Canegrower

The judgment further rejects the argument that payment obligations under the Sugar Industry Agreement can be separated from the rest of the Agreement as obligations falling within the scope section 136(2)(a) of the Companies Act.

Simply the cost of doing business

Rather, the judgment holds that the obligations under the Sugar Industry Agreement are 'simply the cost of doing business' and therefore not subject to the moratorium on the rights of claimants applicable to business rescue proceedings under the Companies Act.

Critically, the judgment takes into account the purpose of the Sugar Industry Agreement, that is to ensure that all parties – growers, millers and refiners – benefit from an equitable division of the proceeds of the local market and are insulated against the risk of the export market.



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What this means practically

What this means practically, is that the Business Rescue Practitioners (BRP's) at Tongaat Hulett and Gledhow cannot

suspend the obligation to pay more than R1.5m that was due to SASA at the end of March 2023, which was not paid at the time due to the BRP's contention that the business rescue process took precedence over industry arrangements.

The substantive basis for the dismissal of the application is a welcome outcome for the ongoing sustainability of the sugar industry.

This judgment brings the industry one step closer to a resolution of this critical industry matter. It does not, however, put the matter to bed.



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Monitoring the situation

SA Canegrowers will monitor the situation in the coming days to determine whether the Business Rescue Practitioners elect to appeal the judgment, and how they address this matter in light of the publication of the proposed business rescue plans last week, which do not include provisions to pay the more than R1.5bn that was due to SASA.

It is hoped that the plans will be revised to accommodate the payment of the industry obligations upheld by the High Court.

Failure to do so will needlessly prolong what has already been a protracted and costly process for the entire industry and will continue to put thousands of livelihoods at risk.

SA Canegrowers will continue to study the full implications of the judgment and to engage industry partners to find a mutually beneficial resolution to this matter maintain the sustainability of the industry and protect the one million livelihoods it provides.

ABOUT THE AUTHOR

Andrew Russell is the chairperson of SA Canegrowers

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