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Your Ref: Siyaya / Prasa

Date: 17 January 2018

THE Honourable MR. JUSTICE FDJ BRAND

E-MAIL: fritzdj.brand@mweb.co.za

Dear Judge Brand,

**IN RE: SIYAYA v PASSENGER RAIL AGENCY OF SOUTH AFRICA (“PRASA”):
PRIVATE ARBITRATION**

1. We received instructions from Siyaya DB Consulting Engineers (Pty) Ltd [in liquidation] and Siyaya Rail Solution (Pty) Ltd (hereinafter referred to as “our clients”) to address this letter to you. We are pleased and delighted to place the following on record and to report as follows: -

1.1 PRASA instructed its attorneys, Messrs. Diale Mogashoa Inc., to provide us with settlement offers or tenders, as envisaged in Rule 34(1) of the Uniform Rules of the High Court. We subsequently received two settlement offers on 21 December 2017 in terms of which PRASA offered or tendered to pay certain amounts in full and final settlement of the following claims: -

Partner: Gabriel Tshepo Mathopo
Associates: Kabelo Mathopo, Thandi Makweya

- 1.1.1 Siyaya DB Consulting Engineers (Pty) Ltd's [in liquidation] claims which were instituted under case numbers: 73933/2015, 73934/2015 and 47598/2016; and
 - 1.1.2 Siyaya Rail Solution (Pty) Ltd's claim which was instituted under case numbers: 47597/2016.
- 1.2 The settlement offers, referred to in paragraph 1.1 *supra*, were made without admission of liability and purely for settlement purposes. PRASA furthermore insisted that the existence, nature, terms and conditions of both settlement offers be regarded as strictly confidential and that same shall not be disclosed by either party in any manner or form, directly or indirectly, to any person or entity under any circumstances;
- 1.3 In the light of the aforementioned, we are not at liberty to disclose the details of both settlement offers herein;
- 1.4 You can unconditionally accept that our clients accepted both the aforementioned settlement offers on 21 December 2017;
- 1.5 Mr. Lindikaya Zide, the chief executive officer of PRASA, confirmed on 27 December 2017 that all the amounts which are due and payable to our clients pursuant to the acceptance of both settlement offers or tenders will be effected on 15 January 2018. Our clients accepted Mr. Zide's aforementioned undertaking and we await payment of the amounts referred to and contained in both settlement offers or tenders;
- 1.6 In the unlikely event that PRASA fails or omits to effect payment of the aforementioned amounts on or before Friday, 19 January 2018, our instructions are to approach you and disclose the terms and conditions of both settlement offers to you, and to request you to make an award in terms thereof, specifically to enable our clients to initiate an application to the High Court of South Africa and to apply for an order as envisaged in Section 31 of the Arbitration Act, No. 42 of 1965; and

- 1.7 We trust that it would not be necessary for us to approach you in this regard and that PRASA will comply with their obligations and responsibilities referred to and contained in the two settlement offers, dated 21 December 2017.
2. The only matter outstanding is Siyaya DB Consulting Engineers (Pty) Ltd's [in liquidation] claim which was initiated under case number 74281/2015: -
- 2.1 The merits of the aforementioned claim is not *per se* in dispute. The only dispute which remains outstanding pertains to the amount which is due and payable to our client;
- 2.2 We addressed a letter to PRASA's attorney in which we directed their attention to certain fundamental aspects, with specific reference to the manner in which our client's claim is calculated or compounded. PRASA's attorneys undertook to obtain instructions from their client and to revert to us in due course. We are therefore awaiting PRASA's attorneys' further instructions in this regard; and
- 2.3 The amount which is still in dispute is, considering the bigger picture of things, not significant at all. We are confident that sanity will prevail and that we would be able to settle this dispute amongst ourselves. In the unlikely event that we are unable to reach an agreement in this regard, we will inform you timeously.
3. We received notice from PRASA's attorneys that the arbitration has been set down for hearing from 26 March 2018 to 29 March 2018. In the event that we are unable to settle the only outstanding matter (under case number: 74281/2015) the arbitration will, on all

probabilities, proceed only in so far as the quantum of our client's claim is concerned. We, however, undertake to keep you posted and to confirm before the end of January 2018 whether or not the matter will proceed.

4. We trust that you find the aforementioned in order and we will revert to you by no later than Wednesday, 31 January 2018.

Yours Faithfully,

A handwritten signature in black ink, appearing to read 'T Mathopo', with a large, stylized initial 'M'.

Yours faithfully,

Per T Mathopo

CC. madimpe@dm-inc.co.za

lzide@prasa.com

ypage@prasa.com