

# GREATER GIYANI MUNICIPALITY



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## **DRAFT RESPONSE TO THE PETITION BY MASINGITA GROUP OF COMPANIES (PTY) LTD AGAINST GREATER GIYANI LOCAL MUNICIPALITY.**

### **1. PURPOSE**

1.1. Purpose of this report is to give the portfolio committee a bird's eye overview of the circumstances that led to the existing dispute between Masingita Group of Companies and Greater Giyani Local Municipality.

### **2. BACKGROUND**

Masingita Group which is a company duly incorporated in terms of the South African company laws, operates its business within the Greater Giyani Local Municipality's area of jurisdiction.

It is common course that Masingita Group boasts quite a number of subsidiary companies which are also doing business under its banner in the entire country but for the present moment we shall confine ourselves to Greater Giyani Local Municipality which is a municipality as defined in section 2 of the Local Government Systems Act which has a legislative mandate in terms of section 156 (2) of the Constitution of The Republic of South Africa 32 of Act 108 of 1996 read together with sections 96 and 98 of the Municipal Systems act of 2000 to amongst other things collect revenue due and payable to the municipality and to provide for matters incidental thereto.

### **3. PROBLEM AREAS**

#### **3.1. PENDING COURT CASES ON THE VERY SAME ISSUES REFERRED TO THE COGTA AND COGHSTA PORTFOLIO COMMITTEES**

3.1.1. As things are it is not clear to us as to whether the Portfolio Committee or the court should be adjudicating on this matter.

*S9(a) of the Limpopo Petition act bars the committee from entertaining matters which are pending in court. See annexure "H". Greater Giyani would highly appreciate if the portfolio committee could give guidance on the above.*

## 3.2. RATE CLEARANCE CERTIFICATE

- 3.2.1. Masingita Group is indebted to the Greater Giyani Municipality in the sum of **R7, 521 823.78** as at November 2020 in rates and taxes which money is needed for the provision of service delivery to its people. This exclude the months of December 2020 to date. Presently the amount owed stands at **R8, 897, 756.90**.  
**See annexure:” A”** being the consolidated statement of account issued to Masingita by Greater Giyani Municipality.
- 3.2.2. Despite the existence of this debt Masingita Group requires of Greater Giyani to issue it with a Rates clearance certificate contrary to what the provisions of S118 of the Systems Act 32 of 2000 prescribes and in-line with paragraph 15.1 (q) Debt Collection and Credit Control Policy of the municipality, ***the consolidated account will not be deconsolidated on application for a revenue clearance certificate and therefore clearance certificate should be issued once the accrued amount on the consolidated accounts have been fully settled.***
- 3.2.3. S118(1) provides thus: **“A registrar of deeds or other registration officer of immovable property may not register the transfer of property except on production to that registration officer of a prescribed certificate-**  
**(a) Issued by the municipality in which that property is situated; and**  
**(b) Which certifies that all amounts due in connection with that property for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties during the two years preceding the date of application for the certificate have been fully paid.**
- 3.2.4. Clearly the Masingita Group could not pass the scrutiny of this provision as abundantly demonstrated in the attached statement marked Annexure “A”. The application by Masingita has not been approved rightfully so by the municipality owing to its failure to comply with the above legislative requirements.
- 3.2.5. This did not go down well with Masingita Group of Companies, and the municipality was hauled before the Thohoyandou Division of The High court under ***case number: 1114/2020*** forcing the municipality to issue the rates clearance certificates to Masingita Group on an urgent basis. The court ***struck the matter off the roll for its lack of urgency and substance***, further granted the cost order in favour of the municipality. See Annexure “B”

## 4. VALUATION ROLL

### 4.1. Municipal Property rate act no. 6 of 2004

Section 30 (1) of the Municipal Property Rates Act requires that a municipality which intends to levy a rate on property must compile a general valuation roll for all properties within the municipal area jurisdiction. In line with Section 78(1) of the Municipal Property Rates Act (MPRA), the municipality caused a 2019 /2020 supplementary valuation roll to be rateable properties in respect of:

- a) Incorrectly omitted from the Valuation roll
- b) Included in the municipality after the last General valuation roll.
- c) Subdivided or consolidated after the last General valuation roll.

- d) Of which the market value has substantially increased or decreased after the last general valuation.
- d) Substantially incorrectly valued during the last general valuation.
- e) That must be re-valued for any other exceptional reason.
- f) Of which the category has changed
- g) The value of which was incorrectly recorded in the valuation roll as a result of clerical or typing error.

#### **4.2. Lodge of objections**

The municipality compiled a supplementary valuation roll for 2019/2020 financial year and was made available for inspection in terms of Section 49 of MPRA. Objections were received for the following properties which belong to Masingita Group of Companies.

- a) Erf 94 Giyani BA.
- b) Erf 107 Giyani BA.
- c) Remainder of Portion 168 of the farm Greater Giyani 891LT.
- d) Portion 178 of the farm Greater Giyani 891LT.
- e) Erf 676 Giyani BA.

The municipality made ample provision time for the objections of the above-mentioned properties in the Supplementary valuation roll for 2019/2020 financial year and subsequently the *objections were finalized by both the Municipal Valuer and Masingita Group of Companies.*

Furthermore, in line with Section 55(1) of the MPRA, the letter also stated that the Municipal Manager will *recover from, or repay to, the person liable for the payments of the rates difference* between the calculated amount actually paid on the property since the effective date and the amount payable in terms of the adjustment on the property since the effective date;

Due to the valuation process objections lodged against properties of Masingita Group of Companies, municipality continued with the normal billing process in compliance with Section 50 (6) which states the *lodging of an objection does not defer liability for payment of rates beyond the determined for payment.*

All municipal accounts relating to Masingita Group of Companies were adjusted in terms of the final supplementary valuation roll after the completion of the valuation objections process. To date there are no discrepancies on Masingita Group of Companies

#### **5. MASINGITA GROUP DEBT IN RESPECT OF LAND USED TO BUILD THE MALL**

5.1. Masingita group of companies had occupied the land/property that belongs to the Municipality by closing the Municipal road that was used by public/taxis with an intention to connect the new and old mall. The Municipal Property Valuer issued a valuation certificate to the amount of ***R1 967 000.00c (One Million Nine Hundred and Sixty-Seven Thousand Rand only).***

5.2. After lengthy discussion and for the fact that Masingita group needed a rate clearance certificate, a Memorandum of agreement of purchase was signed on the ***25<sup>th</sup> of February 2019*** wherein Masingita Group had to pay the amount of ***R1 967 000.00c*** within 30( thirty) days i.e. ***25<sup>th</sup> of March 2019. Please see Annexure "C"***

5.3. To this end Masingita Group has not paid the said amount which leaves Masingita Group owing the Municipality the total amount of ***R9 488 823.78c***

5.4. The Municipality had written to Masingita that the closure of the public road can only be approved if the Developer build an alternative road at the Developer's cost

## **6. BUILDING PLAN APPROVAL**

6.1. The Masingita Property Investment Group submitted initial drawings for the McDonald Restaurant on 28 January 2019 whereupon a quotation was issued. On 31 July 2019 they submitted a revised drawing plan and another quotation was again issued to them, but Masingita Group payment was only affected on 15 August 2019. See in this regard Annexures D1 and D2 respectively.

6.2. It is worth pointing out that in terms of the building practice no application could be entertained before the payment of the applicable fees. The land on which the proposed buildings were to be erected is on top of a **sewerage Mainline** which is the property of the Mopani District. The plans were then circulated to the various divisions of the Greater Giyani and Mopani for review on their respective disciplines. The plans further sent to the Fire Department as there was certain information which was outstanding for the Chief to make a verdict on the plans. **On 10 December 2019 the plans were approved after the Masingita Group furnished the outstanding information.** The said approval was only given on **01 January 2020** and Greater Giyani approved the plans on **29 January 2020**. See approval letter **annexed and marked: D3**.

6.3. The Masingita Group has after the approval of the building plans served the municipality with a letter of demand contending that the municipality is delaying in approving its building plan certificate and resulting in it losing a business opportunity that could have earned them R28 692 76 in rental. **(See Annexure E)**.

6.4. The Municipality does not have control over perceived agreements with third parties, the Municipality denies categorically on the above claim since the Municipality had approved the building plans within a month after having sought the comments from other affected stakeholders.

## **7. ROADS**

### **7.1. ROAD LEADING TO THE MALL**

7.1.1 Masingita Group has also made an application for the upgrading/construction the Municipal road leading to its regional mall and an agreement was struck with GGM to the effect that since GGM had no funds Masingita Group would fund same as a private Developer. See Annexure : **"F1"** The road was to be handed over to the municipality at a later stage. The glaring poor workmanship on the road has not gone down well with the institution and has resulted in civil suits against the municipality. **See in this regard Annexure: "F2"**

To GGM's consternation after the process, Masingita Group seeks to be reimbursed by GGM for costs it incurred which is not possible to fund private developmental costs.

7.1.1. In respect of the above problem issues there is a pending case in Thohoyandou Division of the High Court under case no: \_111/2020. **Please see annexure "G"** which case was earlier struck off the roll for its lack of urgency and substance.

## **7.2. MUNICIPAL ROAD CLOSURE BY MASINGITA GROUP FOR THE PURPOSES OF BUILDING THE MALL**

7.2.1. The Masingita Group has made an arrangement with Greater Giyani to close the unnamed street leading to the new regional mall and Masingita group must at its own cost build an alternative road at its own cost. There was never any arrangement to reimburse them at a later stage as claimed.

## **8. INTERVENTION BY MOPANI DISTRICT EXECUTIVE MAYOR**

The Honourable Executive Mayor arranged a virtual meeting on the in **22 July 2020** between Greater Giyani (PMT and Accounting Officer), Masingita Group of Companies and Mopani District where a joint decision was taken to **resolve the matters amicably**.

## **9. MEETING BETWEEN GREATER GIYANI (PMT, ACCOUNTING OFFICER/ MANAGEMENT**

9.1. We wish to also respectfully place it on record that it is highly fallacious to create an impression that all internal processes were exhausted to this end as on the 27/10/2020 after the above virtual meeting chaired by the Executive mayor of Mopani, the meeting that resolved that both Masingita Group and GGM to try and resolve the dispute amicably.

**Please see attached agenda marked Annexure “I”.**

9.2. The meeting was fruitful to some great extent because a number of resolutions were made.

9.3. The Meeting resolved amongst other things inter alia that:

9.3.1. Masingita Group will withdraw the pending case against GGM at the Thohoyandou high court under **case number: 1114/20** which to date has not happened.

9.3.2. Recourse of this nature could only be sought after all internal process have failed.

9.3.3. The road posing safety hazards constructed by Masingita Group shall be rectified by both parties.

9.3.4. The Municipality will validate the statements of account on rates and taxes to enable Masingita Group to make a payment or an arrangement and same has been done during the working session held on the 13<sup>th</sup> of January 2021 by Masingita Group and Greater Giyani.

9.3.5. Masingita Group send withdrawal of letters of all Petitions that have been written by Masingita Group to the COGTA Portfolio Committee, Provincial COGHSTA Portfolio Committee, Executive Mayor of Mopani District Municipality, MEC for COGHSTA and any other sector department.

9.3.6. After all the resolutions were documented same was sent for signing by Masingita Group as resolved.

9.3.7. At the present moment the final draft that contain all the resolutions has been served on Masingita Group for their countenance. **See annexure “J”** and numerous follow ups were made to have it sent back signed. To date Masingita Group has not signed the resolution agreement that is sought to resolve on agreed issues.

9.3.8. We need to point out with great respect that same was met with unbelievable intransigency by the Masingita Group who began to effect changes on the agreed resolutions.

9.3.9. Masingita Group began to introduce issues which were never part of the resolutions of the meeting of 27/10/2020. **See annexure “K”.**

9.3.10. It comes as a shock to learn that Masingita Group has approached the Portfolio Committee by way of petition while we are still awaiting their signature on the final draft marked Annexure: **“L”** and made various follow ups **See Annexures:M1,M2,M3,M4,M5”**

- 9.3.11. We cannot figure out why the Masingita Group decided to bypass the internal processes as envisaged in the Limpopo petition Act 4 Of 2003 and overburden the already busy portfolio committee.
- 9.3.12. **The Municipality would like to place its commitment on record that we remain committed to work with Masingita Group and willing to discuss any additional issues that were not part of the agreement separately so that we move speedily on implementation of issues that we are in agreement. The clause that deals with this item is part of the meeting resolution.**

## **LEGISLATIVE FRAMEWORK**

- The Constitution of The Republic of South Africa Act 108 of 1996
- Municipal finance management act 56 of 2003
- Municipal Property Rate Act 6 of 2004
- Municipal Systems Act 32 Of 2000
- Limpopo Petitions Act 4 Of 2003
- Greater Giyani Local Municipality Credit Control & Debt Collection by Law.

## **ANNEXURES**

- A.** Statement of Rates and Taxes
- B.** Case no 1114/2020 and Case struck off the roll-on issue of urgency
- C.** Road Closure letters
- D1.** Quotation
- D2.** Proof of payment
- D3.** Proof of approval by Mopani Fire Department
- D4.** Approval by GGM
- E.** Claim by Masingita Group of Companies against GGM
- F1.** Civil claims due to poorly constructed road by Masingita Group
- F2.** Complaint letter to Masingita about the road
- G.** Pending case no.1114/2020 Between Masingita Group and Greater Giyani Municipality
- H.** Limpopo Petition Act 4 of 2003
- I.** Agenda and attendance register
- J.** Agreed Meeting resolutions
- K.** Tempered resolutions by Masingita Group
- L.** Final draft of the resolutions
- M.** Resolutions & Various follow ups (M1,M2,M3,M4&M5)

Hope you find this comprehensible enough.

Kind Regards

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CLLR. SHIBAMBU BA  
Mayor