

## COURT ONLINE COVER PAGE

IN THE HIGH COURT OF SOUTH AFRICA  
Gauteng Local Division, Johannesburg

CASE NO: **2023-073845**

In the matter between:

**DEW CRISP PROPRIETARY LIMITED**

Plaintiff / Applicant / Appellant

and

**DEWCRISP WESTERN CAPE  
PROPRIETARY LIMITED, AMANZI  
FARMS PROPRIETARY  
LIMITED, HELLOCHOICE PROPRIETARY  
LIMITED, PRINCETON PROTECTION  
SERVICES PROPRIETARY  
LIMITED, COMPANIES AND  
INTELLECTUAL PROPERTY  
COMMISSION**

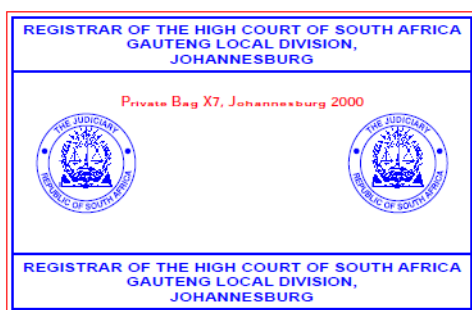
Defendant / Respondent

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### Notice of Motion (Long Form)

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**NOTE:** This document was filed electronically by the Registrar on 26/7/2023 at 10:35:07 AM South African Standard Time (SAST). The time and date the document was filed by the party is presented on the header of each page of this document.



  
ELECTRONICALLY SIGNED BY:

**Registrar of High Court , Gauteng  
Local Division, Johannesburg**

**IN THE HIGH COURT OF THE REPUBLIC OF SOUTH AFRICA  
(GAUTENG DIVISION, JOHANNESBURG)**

**CASE NO:**

In the matter between:

**DEW CRISP PROPRIETARY LIMITED**  
(Registration Number: 2010/025155/07)

Applicant

and

**DEWCRISP WESTERN CAPE PROPRIETARY LIMITED**  
(Registration Number: 1984/004993/07)

First Respondent

**AMANZI FARMS PROPRIETARY LIMITED**  
(Registration Number: 2020/157222/07)

Second Respondent

**HELLOCHOICE PROPRIETARY LIMITED**  
(Registration Number: 2018/330942/07)

Third Respondent

**PRINCETON PROTECTION SERVICES PROPRIETARY  
LIMITED**  
(Registration Number: 2014/215230/07)

Fourth Respondent

**COMPANIES AND INTELLECTUAL PROPERTY  
COMMISSION**

Fifth Respondent



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**NOTICE OF MOTION**

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**KINDLY TAKE NOTICE THAT** the applicant intends bringing an urgent application on **8 August 2023**, at **10h00** or soon thereafter as counsel may be heard, for the following relief:

1. Condoning non-compliance with the Uniform Rules of this honourable Court in respect of time periods and manner of service, and hearing the matter as one of urgency as contemplated in Uniform Rule 6(12)

- 2 Ordering that the first respondent (the "**Company**") be placed under supervision in business rescue in terms of section 131(1) of the Companies Act, 71 of 2008 (the "**Companies Act**") and that the business rescue proceedings commence with immediate effect;
- 3 Appointing Messrs. Warren Richard Castle and Liam Royce as the Company's joint interim business rescue practitioners in respect of the business rescue proceedings contemplated in prayer 2, subject to ratification by the holders of a majority of the independent creditors' voting interest in the business rescue proceedings at the first meeting of the Company's creditors, as contemplated in section 131(5), as read with section 147, of the Companies Act.
- 4 Ordering the costs of this application to be costs in the Company's business rescue proceedings, save that in the event of opposition any party or affected person electing to oppose this application be ordered to pay the applicant's costs jointly and severally, the one paying the other to be absolved.
- 5 Further and/or alternative relief.



**KINDLY TAKE NOTICE FURTHER THAT** the affidavit of **MICHAEL DAVID KAPLAN** together with its annexures will be used in support of this application.

19072023

**TAKE NOTICE FURTHER THAT** the applicant appoints the offices of **WERKSMANS ATTORNEYS**, whose details are set out below, as the address at which service of notices and process in these proceedings will be accepted.

**TAKE NOTICE FURTHER THAT** the applicant consents to receiving service of court processes in this application by email sent to the following addresses: [elevenstein@werksmans.com](mailto:elevenstein@werksmans.com) and [nharduth@werksmans.com](mailto:nharduth@werksmans.com).

**TAKE NOTICE FURTHER THAT** any cited party or affected party intending to oppose this application is required to (i) **notify** the applicant's attorneys of record in writing of their intention to do so by **Friday, 28 July 2023**, and (ii) in such notice to appoint an address referred to in Rule 6(5)(b) at which that party or affected person will accept service of process in these proceedings; and, thereafter (iii) having entered a notice of intention to oppose, the opposing party will be required to file an **answering affidavit**, if any, on or before **Tuesday, 1 August 2023**.



**TAKE NOTICE FURTHER THAT** should you fail to oppose this application, file an answering affidavit, or appear at Court, an order may be granted in your absence upon the hearing date.

**KINDLY ENROLL THE MATTER ACCORDINGLY**



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**DATED at JOHANNESBURG on this the 26th day of JULY 2023.**

  
**WERKSMANS ATTORNEYS***Applicants' Attorneys*

The Central

96 Rivonia Road

SANDTON

Ref: Dr E Levenstein/Ms N Harduth/DEWC51592.1

Tel: 011 535 8000

Email: [elevenstein@werksmans.com](mailto:elevenstein@werksmans.com)[nharduth@werksmans.com](mailto:nharduth@werksmans.com)

TO:  
**THE REGISTRAR OF THE ABOVE HONOURABLE COURT**  
**JOHANNESBURG**



AND TO:  
**DEWCRISP WESTERN CAPE PROPRIETARY LIMITED**

*First Respondent*

Dew Valley Corner 50

Kleinonderhout Road

Bapsfontein

Gauteng,

2210

*(Registered Address)*

Service by Sheriff

AND TO:  
**AMANZI FARMS PROPRIETARY LIMITED**

*Second Respondent*

66 Mount Pellan Drive

Bassonia

Gauteng

2091

*(Registered Address)*

Service by Sheriff

19072023

**AND TO  
HELLOCHOICE PROPRIETARY LIMITED**

*Third Respondent*  
Section 5 Unit H  
Quarry Office Park  
400 Old Howick Road  
Hilton  
KwaZulu Natal  
3245  
(Registered Address)

Service by Sheriff

**AND TO:  
PRINCETON PROTECTION SERVICES PROPRIETARY LIMITED**

*Fourth Respondent*  
Upper Level St Peters Square, Main Road  
Observatory  
Western Cape  
7925  
(Registered Address)

Service by Sheriff



**AND TO:  
THE COMPANIES AND INTELLECTUAL PROPERTY COMMISSION**

*Fifth Respondent*  
77 Meintjies Street  
The DTI Campus  
Block F  
Ground Floor  
PRETORIA  
Email: corporatelegalservices@cipc.co.za; businessrescue@cipc.co.za    Service by email,  
per practice directive

## COURT ONLINE COVER PAGE

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Plaintiff / Applicant / Appellant

and

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PROPRIETARY LIMITED, AMANZI  
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LIMITED, HELLOCHOICE PROPRIETARY  
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COMMISSION**

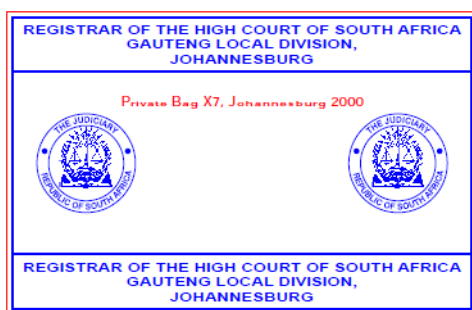
Defendant / Respondent

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### Founding Affidavit

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**NOTE:** This document was filed electronically by the Registrar on 26/7/2023 at 10:41:02 AM South African Standard Time (SAST). The time and date the document was filed by the party is presented on the header of each page of this document.



ELECTRONICALLY SIGNED BY:

**Registrar of High Court , Gauteng  
Local Division, Johannesburg**

NH/NH  
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**IN THE HIGH COURT OF THE REPUBLIC OF SOUTH AFRICA  
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(Registration Number: 2020/157222/07)

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(Registration Number: 2018/330942/07)

Third Respondent

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LIMITED**  
(Registration Number: 2014/215230/07)

Fourth Respondent

**COMPANIES AND INTELLECTUAL PROPERTY  
COMMISSION**

Fifth Respondent

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**FOUNDING AFFIDAVIT**

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I, the undersigned,

**MICHAEL DAVID KAPLAN**

do hereby make oath and state that:

- 1 I am a major male director of the applicant, situated at Dew Valley Corner 50, Kleinonderhout Road, Bapsfontein, Gauteng, 2210. I am duly authorised to





19072023

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depose to this affidavit and to apply for the relief sought in the notice of motion on behalf of the Dew Crisp.

2 I am also a director of the first respondent.

3 The facts herein stated are within my personal knowledge and are true and correct, unless the context indicates otherwise. In circumstances, where I do not have personal knowledge, I have relied on the facts provided by Darren Duncan, the Dew Crisp Group Chief Financial Officer, and which facts are supported by a confirmatory affidavit attached hereto marked "FA1".



4 Where I make legal submissions, I do so on the advice of the applicants' legal representatives, Werksmans Attorneys ("Werksmans").

#### THE PARTIES

5 The applicant is **DEW CRISP PROPRIETARY LIMITED**, a company with limited liability, duly registered and incorporated in accordance with the company laws of the Republic of South Africa under registration number 2010/025155/07, with its registered address and principal place of business at Dew Valley Corner 50, Kleinonderhout Road, Bapsfontein, Gauteng, 2210. The applicant will hereafter be referred to as "**Dew Crisp**".

6 The first respondent is **DEWCRISP WESTERN CAPE PROPRIETARY LIMITED** a company with limited liability, duly registered and incorporated in accordance with the company laws of the Republic of South Africa under

19072023

registration number 1984/004993/07, with its registered address and principal place of business at Dew Valley Corner 50, Kleinonderhout Road, Bapsfontein, Gauteng, 2210. The first respondent will hereafter be referred to "**the Company**".

- 7 The second respondent **AMANZI FARMS PROPRIETARY LIMITED** a company with limited liability, duly registered and incorporated in accordance with the company laws of the Republic of South Africa under registration number 2020/157222/07, with its registered address at 66 Mount Pelland, Bassonia, Gauteng, 2091. The second respondent has applied for the liquidation of the Company by order of this Court under case number 2023/053421, and which application is *lis pendens*. A copy of the Notice of Motion and Founding Affidavit (excluding annexures) is attached hereto marked "**FA2**". The second respondent will hereafter be referred to as "**Amanzi**".



- 8 The third respondent **HELLOCHOICE PROPRIETARY LIMITED** a company with limited liability, duly registered and incorporated in accordance with the company laws of the Republic of South Africa under registration number 2018/330942/07, with its registered address at Section 5 Unit H, Quarry Office Park, 400 Old Howick Road, Hilton, KwaZulu Natal, 3245. The third respondent has applied for the liquidation of the Company by order of this Court under case number 2023/041127, and which application is *lis pendens*. A copy of the Notice of Motion and Founding Affidavit (excluding annexures) is attached hereto marked "**FA3**". The third respondent will hereafter be referred to as "**Hellochoice**".

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9 The fourth respondent **PRINCETON PROTECTION SERVICES PROPRIETARY LIMITED**, a company with limited liability, duly registered and incorporated in accordance with the company laws of the Republic of South Africa under registration number 2014/215230/07, with its registered address at Upper Level St Peters Square, Main Road, Observatory, Western Cape, 7925 and its principal place of business at 21 Montrose Avenue, Claremont, Cape Town, 7708. The fourth respondent has applied for the liquidation of the Company by order of the Western Cape Division of the High Court of South Africa under case number 11227/2023, and which application is *lis pendens*. A copy of the Notice of Motion and Founding Affidavit (excluding annexures) is attached hereto marked "**FA4**". The fourth respondent will hereafter be referred to as "**Princeton**".



10 The fifth respondent is the **COMPANIES AND INTELLECTUAL PROPERTY COMMISSION**, being a commission established in terms of Section 185 of the Companies Act 71 of 2008 ("**Companies Act**") with its address at The DTI Campus (Block F - Entfufukweni), 77 Meintjies Street, Sunnyside, Pretoria, and having elected electronic service at [corporatelegalservices@cipc.co.za](mailto:corporatelegalservices@cipc.co.za) in terms of the Practice Note attached hereto as annexure "**FA5**". The fourth respondent will hereafter be referred to as "**the CIPC**".

11 The Company's affected persons, listed in the annexure hereto marked "**FA6**", ("**Affected Persons**") will, in terms of section 131(2)(b) of the Companies Act, be notified of this application in the manner prescribed in regulation 124 of the Companies Regulations of 2011 ("**Regulations**"), but need not be cited as



19072023

respondents. Proof of such notification will be delivered prior to the hearing of this matter.

## RELIEF SOUGHT

12 Dew Crisp seeks an order:

12.1 in terms of section 131(1) of the Companies Act, placing the Company in business rescue; and

12.2 in terms of section 131(5) of the Companies Act, appointing Mr Warren Richard Castle ("**Castle**") and Mr Liam Royce ("**Royce**") as the Company's joint interim business rescue practitioners.



## JURISDICTION

13 Section 131(1) of the Companies Act provides that an affected person may apply to 'Court' for an order placing a company in business rescue, and section 131(5) provides that the 'Court' hearing such an application may also appoint an interim business rescue practitioner nominated by the applicant. 'Court' as defined by section 128(1)(e) of the Companies Act, means the High Court that has jurisdiction over the matter.

14 The Company's registered address and principal place of business, being Dew Valley Corner 50, Kleinonderhout Road, Babsfontein, Gauteng, 2210, falls within this honourable Court's physical jurisdiction.

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- 15 This honourable Court accordingly has the necessary jurisdiction to hear this application.

#### LEGAL STANDING

- 16 Dew Crisp is the sole registered shareholder of the Company and is, as such, an 'affected person' as defined in section 128(1) of the Companies Act and has *locus standi* to bring this application in terms of section 131(1) of the Companies Act.



#### FINANCIAL DISTRESS

- 17 The Company is a wholly- owned subsidiary of Dew Crisp. Dew Crisp is not an operating entity. The Company, on the other hand, is an operating entity that provides value-added salad products to the retail and food services industries.
- 18 Regrettably, and notwithstanding the equity capital in the sum of R42,330,738 which Dew Crisp has provided to the Company to date, and loans provided by companies within the group in the aggregate sum of R23,152,194, the Company's financial position has been adversely affected by the following:
- 18.1 The agricultural sector, as a whole, was adversely affected by the COVID-19 pandemic and the lockdown measures put in place to curb the spread of the virus over the period 2020 to at least 2021.

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19072023

18.2 For instance, quick service restaurants ("QSR") were forced to close their doors for extended periods and, once they re-opened, they traded well below pre-pandemic levels for some time.

18.3 In addition, restricted trading hours severely hampered retail sales. Retail buying patterns also changed, away from the Company's leafy salad type products to more shelf stable and more affordable core vegetable products. All categories of prepared and partially prepared fresh product sales, consequently declined dramatically across all retailers that purchased product from the Company. Sales of these products have, as at date hereof, not yet recovered to pre-pandemic levels.



18.4 Not only did this result in the Company generating an income far below that of pre-pandemic periods, but a large amount of money, in the approximate sum of R9 million, was lost by the Company due to the fact that crops, which had already been planted and were ready for harvest, could neither be harvested nor sold due to the lockdown measures in place and its lingering effects. These crops, and any income that they were meant to generate, were consequently lost.

18.5 In addition to the above, in or about 2021, the Company decided to consolidate its operations by relocating its operations in Lanseria to Bapsfontein, in order to create scale and increased operating efficiencies. However, the costs incurred during this process resulted in

95/51

19072023

the Company losing approximately R20,000,000 due to unplanned outlays and operational challenges.

18.6 The Company's working capital was consequently eroded to such an extent, that it did not have sufficient funding for replanting crops and its day-to-day operations.

18.7 As a result, the Company was forced to purchase more fresh produce on the open market than it otherwise would have, and this led to a further deterioration of the Company's margins and strained its cashflow even further.



18.8 At the beginning of 2022, and as the market was starting to show signs of some recovery, unexpected commodity price increases, caused by Russia's war on Ukraine in February 2022 and increasing global inflation, further impacted upon the Company's margins. That is, the input costs including, but not limited to, the cost of fertilizer, insecticides, pesticides, other necessary chemicals and diesel increased markedly (up to 50%) and unexpectedly. This, and the ever weakening and volatile rand exchange rate, caused a material increase to the overall cost to produce crops, and a concomitant decrease in the Company's net income.

18.9 The Company, which had concluded agreements with its QSR customers that included pre-agreed sales amounts, could not increase its prices and was forced to sell its crops at a loss. It was hoped that the

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Company could claw back its losses through future equalization based on changing market prices. Such equalization has not yet occurred.

18.10 The Company also experienced further pressure resulting from high internal overhead costs.

18.11 More recently, wide-spread and ongoing loadshedding, which has resulted in the haphazard interruption of electricity supply to the Company (depending on the loadshedding stage, which often changes without notice), has not only had a negative impact on the Company's productivity generally, but has also had a negative impact on the quality and quantity of the Company's crops because, for example, irrigation and cold-chain management has been severely disrupted. Further, the Company has had to incur massive costs for power generation to keep its farms and facilities operating. For example, the Company has spent approximately R180 thousand/month on diesel, to keep, *inter alia*, the processing plants and cooling systems (necessary to regulate temperature throughout the processing plant) operating.



18.12 Climate Change should also not be overlooked. Excessive rainfall and extended periods of overcast conditions over the last three years, particularly in Gauteng, have severely impacted the yield of crisp lettuce. This resulted in the Company having buy in crisp lettuce from municipal markets at poor yield and exorbitant prices, far in excess of the standard prices that the Company had agreed with its customers, often on a cash-on-delivery basis.

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- 18.13 Further, the Company's largest procured product in rand value and volume is tomatoes. The volume of tomatoes available to the market was greatly impacted by adverse weather and a crop disease, known as Tuta, over the last three years. The price of tomatoes escalated from approximately R10/kilogram in December 2020, to around R26/kilogram by April 2021, and is approximately R16/kilogram as at date hereof. The increase in prices for tomatoes has also had an adverse impact on the Company's ability to generate a profit.



- 19 In addition to the external stressors mentioned above:

- 19.1 The Company's farm in Philippi (Western Cape) has traditionally grown a complex mix of low yielding fancy lettuce at loss making prices. This, coupled with increasing farming costs, has rendered the farm unprofitable.
- 19.2 The processing facility in Franschhoek (Western Cape) had some operational challenges that have caused it to also become unprofitable. The key cost driver is the cost of local distribution from the farm in Philippi to Franschhoek at approximately R4 million per annum. The logistics cost of winter supply from the Brits area to Franschhoek every winter has also increased by approximately 30% since 2021.

19072023

19.3 The current financial year has seen sales decline across all retailers due to short supply from the Company's farms, as working capital constraints has limited the Company's ability to adhere to the weekly farming recipe i.e. effective fertility system for healthy soil that grows high-yielding and high-quality crops.

20 The Company's balance sheet for the end of June 2023, a copy of which is attached hereto marked "**FA7**", reflects the Company's liquidity constraints in the line items "Trade and Other Receivables" and "Cash and Cash Equivalents", which indicate that the Company owes more money to its creditors than it has cash available on hand. It also shows that as at the end of June 2023, the Company's liabilities exceeded its assets.



21 Further, over the period September 2022 to June 2023 the Company's earnings before interest, taxes, depreciation and amortization ("**EBITDA**") equalled a total negative amount of -R4,528,096. Of this, in June 2023, the Company's EBITDA equalled a negative amount of -R1,599,305, that is, representing 35% of the Company's total EBITDA over the last 10 months. A copy of the Company's income statement is attached hereto marked "**FA8**".

22 In trying to address its ongoing financial constraints, the Company has exhausted all forms of intra-group and external funding previously available to it. More specifically, the Company has been unable to raise funding to date hereof given the weakness of its balance sheet.

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23 The inability to procure funding has been exacerbated by pending liquidation applications brought by Amanzi, Hellochoice and Princeton.

24 The Company is therefore financially distressed, within the meaning of section 128(1)(f) of the Companies Act, in that, *inter alia* –

24.1 it appears reasonably unlikely that the Company will be able to pay all of its debts as they fall due for payment within the ensuing six months, in terms of section 128(1)(f)(i) of the Companies Act; and



24.2 the company is factually insolvent on its balance sheet, in terms of section 128(1)(f)(ii) of the Companies Act.

#### REASONABLE PROSPECT OF RESCUE

25 Notwithstanding the above, Dew Crisp believes that there is a reasonable prospect of rescuing the business of the Company, if the Company commences Business Rescue and if such action is taken immediately.

26 The Company was established in 1983 and has grown into one of the leading providers of value-added salad products to the retail and food services industries. It pioneered GFT (gravel farming technique) Hydroponic Farming in the 1980's. Its business has a very sound and good reputation in the markets that it services.

19072023

27 The Company introduced lettuce varieties, other than crisp lettuce, such as butter lettuce and red and green curly varieties to South African retail and consumers in the 1980's. the Company changed salad consumption patterns by introducing prepared fresh salads and fresh salad ingredients to the consumer. These products were extremely well received by retailers and consumers across the country. Notwithstanding its financial and operational constraints, The Company remains a supplier of choice to leading retailers of a broad range of leafy and core veg crops nationally.



28 The Company provides a vertically integrated service to its customers. With the increase in trading risks across the agricultural sector, this is believed to be an advantageous model as, given the correct management and cash flow, the Company can reduce its reliance on out-growers, which mitigates supply chain risk. This is fundamentally as a result of the fact that the Company can guarantee a more consistent supply than its competitors. In fact, QSRs require that such mitigation measures be implemented.

29 The Company also commenced with formal supply of it's products to QSRs in or about 1995, with the opening of the first McDonalds' restaurant in Blackheath, Gauteng. Since then and over a period of almost 30 years, the Company has become the current key supplier of all fresh produce to McDonalds, KFC, Burger King, Hungry Lion and Nando's nationally.

30 The Company was the first producer of ready to eat pillow packets of fresh goods which led to a strong relationship with the retail chain, Woolworths. With security of supply and a strong track record, Woolworths requested the

19072023

Company, almost 27 years ago, in or about 1996, to expand its operations to the Western Cape, thereby increasing its national footprint.

- 31 Retail and QSR supply currently remain the two dominant categories of the Company's business, being responsible for approximately 30% and 70% of the Company's revenue contribution respectively. Although the Company's supply to its retail customers have not yet returned to pre-pandemic levels, the Company's supply to QSRs have reached (and some months even exceed) pre-pandemic levels.



- 32 The Company has two major operating centres in Gauteng and in the Western Cape.
- 33 The Company's state-of-the-art, high-risk facility in Franschhoek (Western Cape), commissioned in March 2008, boasts the very latest processing and packing technology, including a multi-head weigher. The facility has been FSSC 22000 certified since October 2013, with standards of production that meet and exceed all the Company's customers audit requirements. A team of highly experienced managers and technical personnel complement the 228 people employed at the factory.
- 34 The Company's Philippi (Western Cape) commodity packing facility supplies a wide range of seasonal commodities product to the retail and wholesale customer base. The packaging facility makes use of conventional and under protection farming. The total farming area is 130 hectares, of which 5 hectares is under protection. A team of highly experienced managers and technical

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personnel complement the 173 people employed at the facility. Also situated next to the packing facility is a well supported farmstall.

- 35 The operations, machinery, plant and equipment at the Megatola (Gauteng) facility was relocated to the in 2021 to the Bapsfontein (Gauteng) farm. This state-of-the art, high-risk facility was originally commissioned in 1992.

- 36 The Company's Dew Valley farm in Bapsfontein (Gauteng) focuses mainly on growing crops and commodity packing which surpasses the Company's customers' quality and safety audits. It is equipped with the latest food processing equipment, washers and a multi-head weighers. A team of highly experienced managers and technical personnel complement the more than 286 people employed at the farm.



- 37 Taking into consideration what is set out above and despite its current constraints, it is self-evident that the Company has an underlying business worth rescuing.

- 38 In this regard, Dew Crisp envisages that the objectives of business rescue, as set out in section 128(1)(b)(iii) of the Companies Act, may reasonably be achieved in business rescue through a multi-phased process, as follows:

38.1 Phase 1:

- 38.1.1 Post commencement finance must be secured on an urgent basis. In this regard:

19072023

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38.1.1.1 the Company, which urgently requires capital to plant crops by the end of August 2023 for the forthcoming season, has received an indication from Dew Crisp and its shareholders that they would be willing to provide post commencement finance to the Company, once the Company is placed in business rescue, in the amount of R6,000,000, over three tranches of R2,000,000 each, to be used for the Company's planting program; and



38.1.1.2 the Company has received an indication from its traditional financier (bankers) that it may consider providing post commencement finance to the Company, once the Company is placed in business rescue, in the amount of up to R15,000,000;

38.1.2 In its business rescue process, the profitability of the Company's existing product lines and supply agreements will have to be assessed. That is, a cost rationalization process, to determine the sources of costs throughout the Company's supply chain, is to be undertaken to establish which product lines are profitable and which are not.

38.1.3 The current consultation process held in terms of section 189A of the Labour Relations Act 66 of 1995 can be progressed and which may reduce the Company's overhead costs further.



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## 38.2 Phase 2:

38.2.1 Once the cost rationalization process is completed, where product lines are found to be unprofitable, customers ought to be engaged to negotiate revisions to the supply agreements in order to achieve more profitable outcomes for the Company. This may include separate price negotiations for customers situated in Gauteng and the Western Cape. In this regard, farming in the Western Cape is more expensive, particularly as the farm requires the use of peat blocks, as the farm does not have the best soil medium required to produce top grade produce. However, where more profitable outcomes for the Company cannot be achieved through these negotiations, the Company should exit these relationships in a planned manner so as not to disrupt the Company's food chain supply to its customers;



38.2.2 The creation of an equalization fund, so that there is a formally agreed claw back mechanism with the Company's customers to recover losses due to market fluctuations beyond the control of the Company.

38.2.3 Increasing the number of hectares that will be planted, subject to the availability of post-commencement finance and the Company's cash flows. This increase in hectares planted should allow the Company to not only grow for its traditional customers,

but to also have excess produce available that can be sold on the market in order to increase the Company's cashflows. In addition, the costs incurred by the Company will also be reduced, as it will no longer have to supplement its own produce with produce that must be bought from other growers, such as onions which is a key part of the QSR offering.

### 38.3 Phase 3:



38.3.1 The Company's overall customer base ought to be expanded, in order to mitigate against the risk of over reliance on a limited customer base. This may entail a division of the Company's production business - that will continue to supply to the food services sector, specifically, QSRs and the retail sector; and the Company's farming business - that will aim to grow high value commodity crops to take advantage of increased market prices where possible.

38.3.2 The shift in focus by the Company towards commodities will also entail better utilization of the Company's existing cold storage facilities so that produce may be stored appropriately, in order that the Company may better time the market for when its products are in short supply and which can then be sold at a premium.

39 In addition, if the Company is placed under supervision in terms of Chapter 6 of the Companies Act, the pending liquidation applications by Amanzi,

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Hellochoice, and Princeton will be suspended, and initiatives can be taken by the Company's joint business rescue practitioners, when finally appointed, to take the following steps –

- 39.1 take advantage of the immediate temporary moratorium on all payments to creditors in terms of section 133 of the Companies Act;
- 39.2 consider the possible suspension or cancellation of the Company's obligations in terms of section 136(2) of the Companies Act;
- 39.3 progress continuous engagement with all of the Company's stakeholders to retain value in the Company, its business and its assets;
- 39.4 engage in discussions with various parties regarding post commencement financing in order to pay salaries and wages and continue with the Company's business operations, including the planting of crops for the new seasons, and to commence doing so during its business rescue proceedings;
- 39.5 negotiating a restructuring of the Company's debts with its creditors, to be included in the Company's business rescue plan, so that it may continue with its business on a solvent basis once the plan has been substantially implemented; and/or
- 39.6 negotiating the sale of the Company's business or part thereof as a going concern, or of its assets, in terms of section 134 at a value higher than



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what could be achieved in a liquidation, and where some, if not all, of the Company's employees could retain their jobs.

- 40 Accordingly, although the Company is financially distressed, there is a reasonable prospect of rescuing the Company and, accordingly, Dew Crisp maintains the view that the Company needs to be placed in Business Rescue.

#### LIQUIDATION A DAMAGING ALTERNATIVE



- 41 As explained above, the Company's core business is sound and capable of being restored to solvency. The combination of events that have led to its financial distress is unlikely to recur, and there are positive signs of growth in some areas despite the setbacks.
- 42 The Company presently employs approximately 700 persons, many of whom come from disadvantaged backgrounds. Their jobs stand to be lost if liquidation ensues.
- 43 Further, although it is intended to rescue the company on the basis that it will be able to continue its business, it is likely that any dividend from liquidation will be meagre.
- 44 I attach hereto, as annexure "FA9" a schedule setting out what creditors may expect to receive in a liquidation, as compared to the business rescue proceedings envisaged above. As appears from the schedule, it is estimated that concurrent creditors will receive approximately 10c/R in a liquidation,

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whereas it is estimated that unsecured creditors may receive up to 37c/R in business rescue.

#### NOMINATED BUSINESS RESCUE PRACTITIONERS

45 Dew Crisp nominates Castle and Royce for appointment by this honourable Court as the Company's joint interim business rescue practitioners.

46 Castle is licensed as a senior business rescue practitioner, by virtue of the fact that he has actively been engaged in business turnaround practice for a combined period of at least 10 years. A copy of the business rescue practitioner's license which the CIPC issued to Castle is attached hereto as annexure "FA10", and a copy of Castle's curriculum vitae is attached hereto as annexure "FA11".



47 Royce is licensed as a junior business rescue practitioner, by virtue of the fact that he has actively been engaged in business turnaround practice for a combined period of less than 5 years. A copy of the business rescue practitioner's license which the CIPC issued to Royce is attached hereto as annexure "FA12", and a copy of Royce's curriculum vitae is attached hereto as annexure "FA13".

48 A copy of the declarations by each of Castle and Royce, confirming that they both meet the criteria set out in section 138 for appointment as interim joint business rescue practitioners of the Company, is attached hereto as annexures "FA14" and "FA15" respectively.

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- 49 Castle and Royce are well suited to supervise the Company in its business rescue proceedings and to fulfill the role and perform the responsibilities of business rescue practitioners as set out in Chapter 6 of the Companies Act.

## URGENCY

- 50 I respectfully submit that the urgency of the matter is inherent.



- 51 Further, as mentioned above, in trying to address its ongoing financial constraints, the Company has exhausted all forms of intra-group and external funding previously available to it.

- 52 Funding is, however, urgently needed in order to:

- 52.1 fund the Company's continued business operations, which includes planting crops by the end of August 2023 for the forthcoming season; and

- 52.2 pay the salaries and wages, that will become due to the Company's more than 700 employees at the end of August 2023.

- 53 Negotiations are ongoing intra-group and with various financial institutions with respect to the funding the Company. The Company's potential funders, both its external financial financiers and intra-group funders, have advised the Company that they will only consider funding the Company, if it is placed in

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business rescue, and where funding can be made available as post-commencement finance. The reasoning for this is the protection and preference which post-commencement financiers have by virtue of the provisions of section 135 of the Companies Act.

- 54 Dew Crisp fears that if the Company does not commence business rescue on an urgent basis, so that the necessary action can be taken immediately to rescue the Company, its highly experienced managers and technical personnel will resign and the value of the Company's business and assets will be severely eroded.



- 55 The South African economy simply cannot afford to lose another company with a viable business to liquidation and render 700 employees and their dependents without a source of income. The Company should be rescued.

In the circumstances, the applicant prays for an order as set out in the accompanying notice of motion.

DEPONENT - MICHAEL DAVID KAPLAN

SIGNED before me at JHB on this 26 day of **JULY 2023**, the deponent having sworn that the contents of this affidavit are both true and correct, acknowledged that the deponent knows and understands the contents of this affidavit,

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that the deponent has no objection to taking the prescribed oath and considers the prescribed oath to be binding on the deponent's conscience.



**COMMISSIONER OF OATHS**

Full Name:

Capacity:

Address:

**BRANDON RICHARD COLE**  
COMMISSIONER OF OATHS  
PRACTISING ATTORNEY R.S.A  
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SANDTON, JOHANNESBURG, 2196  
FAIRBRIDGES WERTHEIM BECKER  
ATTORNEYS





IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, JOHANNESBURG

**CASE NUMBER: 073845/2023**

**BEFORE HONOURABLE ACTING JUSTICE DU PLESSIS**

**ON 1 AUGUST 2023**

In the matter between:

**DEW CRISP PROPRIETARY LIMITED**

(Registration Number: 2010/025155/07)



Applicant

and

**DEWCRISP WESTERN CAPE PROPRIETARY LIMITED**

(Registration Number: 1984/004993/07)

First Respondent

**AMANZI FARMS PROPRIETARY LIMITED**

(Registration Number: 2020/157222/07)

Second Respondent

**HELLOCHOICE PROPRIETARY LIMITED**

(Registration Number: 2018/330942/07)

Third Respondent

**PRINCETON PROTECTION SERVICES PROPRIETARY  
LIMITED**

(Registration Number: 2014/215230/07)

Fourth Respondent

**COMPANIES AND INTELLECTUAL PROPERTY  
COMMISSION**

Fifth Respondent

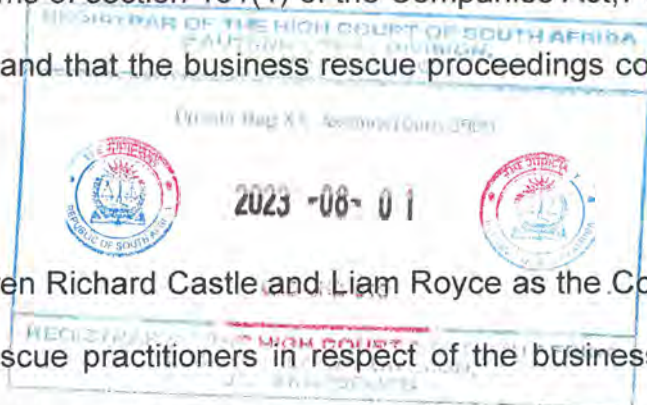
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**COURT ORDER**

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**HAVING** read the papers filed of record and having heard counsel, the following order is made -

- 1 Condoning non-compliance with the Uniform Rules of above Honourable Court in respect of time periods and manner of service and hearing the matter as one of urgency as contemplated in Uniform Rule 6(12);
- 2 Ordering that the first respondent (the "**Company**") be placed under supervision in business rescue in terms of section 131(1) of the Companies Act, 71 of 2008 (the "**Companies Act**") and that the business rescue proceedings commence with immediate effect;
- 3 Appointing Messrs. Warren Richard Castle and Liam Royce as the Company's joint interim business rescue practitioners in respect of the business rescue proceedings contemplated in prayer 2, subject to ratification by the holders of a majority of the independent creditors' voting interest in the business rescue proceedings at the first meeting of the Company's creditors, as contemplated in section 131(5), as read with section 147, of the Companies Act; and
- 4 Ordering the costs of this application to be costs in the Company's business rescue proceedings, save that in the event of opposition any party or affected person electing to oppose this application be ordered to pay the applicant's costs jointly and severally, the one paying the other to be absolved.



**BY THE COURT**

**Registrar**

Counsel for Applicant  
**Adv. Jonathan Blou SC**  
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Instructed by  
**WERKSMANS ATTORNEYS**

