

**IN THE SPECIAL TRIBUNAL
(REPUBLIC OF SOUTH AFRICA)**

Held at Booyesen's Magistrate Court, Johannesburg

CASE NO: GP06/2022

In the matter between:

SPECIAL INVESTIGATING UNIT

First Applicant

TRANSNET SOC LTD

Second Applicant

and

DYNAMIC POWER ENGINEERING (PTY) LTD

with registration no. 2018/231813/07, **previously
SUPERFECTA TRADING 209 (PTY) LTD** with
registration no. 2018/231813/07, **converted from
SUPERFECTA TRADING 209 CC** with registration
no. 2002/024381/23

First Respondent

BBDM BROS ADVERTISING AGENCY (PTY) LTD

Second Respondent

ZAKHELE EZEKIEL 'THABO' LEBELO

Third Respondent

ZAKHELE EZEKIEL LEBELO N.O.

In his representative capacity as a Trustee of the
Thabo Lebelo Family Trust

Fourth Respondent

ALETTA MOKGORO MABITSI N.O.

In her representative capacity as a Trustee of the
Thabo Lebelo Family Trust

Fifth Respondent

PHATHUTSHEDZO BRIGHTON MASHAMBA

Sixth Respondent

MATLHODI PHILLICIA MASHAMBA

Seventh Respondent

**INDUSTRIAL DEVELOPMENT CORPORATION OF
SOUTH AFRICA LIMITED**

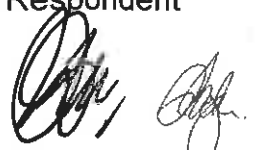
Eighth Respondent

TRANSNET RETIREMENT FUND

Ninth Respondent

AVIWE NDYAMARA N.O.

Tenth Respondent



SETTLEMENT AGREEMENT: THE FIRST RESPONDENT

PARTIES:

This Agreement is made between:

- (1) **THE SPECIAL INVESTIGATING UNIT**, an organ of state with juristic personality referred to in section 2(1)(a)(i) of the Special Investigating Units and Special Tribunals Act 74 of 1996 and as established by the President of the Republic of South Africa in terms of Proclamation No. R. 118 of 2001 (published in Government Gazette 22531 of 31 July 2001) ("**the SIU**");
- (2) **TRANSNET SOC LIMITED**, a state-owned company registered in accordance with the laws of the Republic of South Africa under registration number 1990/000900/30 ("**Transnet**");
- (3) **DYNAMIC POWER ENGINEERING (PTY) LTD** with registration no. 2018/231813/07, previously **SUPERFECTA TRADING 209 (PTY) LTD** with registration no. 2018/231813/07, converted from **SUPERFECTA TRADING 209 CC** with registration no. 2002/024381/23 ("**Dynamic Power**"),

collectively referred to as "**the Parties**" and each individually "**a Party**".

WHEREAS:

- A. The SIU and Transnet launched a review application in the Special Tribunal against the Respondents on 1 November 2022 ("**the review application**") wherein they sought, amongst other things, that Dynamic Power be directed to pay Transnet:
 - A.1 the amount of R 8 540 641.00, together with interest thereon calculated at the rate prescribed by section 1 of the Prescribed Rate of Interest Act 55 of 1975 ("**Prescribed Rate of Interest Act**"), from 26 February 2016 to date of payment in full (including such accrued interest);



- A.2 the net profit it earned as a result of the tender awarded to Dynamic Power (then Superfecta) for the installation of two generators for the Carlton Centre Precinct (tender no. TPCCT/JHB/730) (“**the Generators contract**”), with interest thereon calculated at the rate prescribed by section 1 of the Prescribed Rate of Interest Act from date of judgment to payment in full (including such accrued interest); and
- A.3 the net profit it earned as a result of the appointment of Dynamic Power (then Superfecta) as the contractor for electrical and mechanical services at Transnet’s Carlton Centre precinct (“**the Maintenance contract**”) with interest thereon calculated at the rate prescribed by section 1 of the Prescribed Rate of Interest Act from date of judgment to payment in full (including such accrued interest).
- B. The review application is enrolled for hearing on 10 – 12 February 2025.
- C. Dynamic Power launched civil proceedings in the High Court of South Africa (Gauteng Division, Pretoria) against Transnet on 23 October 2023 under case number: 2023-109020 (“**Dynamic Power’s High Court Case**”).
- D. The SIU and Transnet on the one hand and Dynamic Power on the other hand have agreed to settle both the review application in as far as it relates to Dynamic Power, and Dynamic Power’s High Court Case on the terms and conditions contained herein (“**the Agreement**”).

IT IS AGREED AS FOLLOWS:

1. ACKNOWLEDGEMENT

The Parties acknowledge that they are signing this Agreement without any duress or coercion of any kind, and with full knowledge and understanding of its contents.

2. DURATION

Notwithstanding anything to the contrary in this Agreement, this Agreement shall commence on the date on which this Agreement is signed by the Parties (“**Signature Date**”) and shall endure for so long as any of the Parties has any obligations hereunder.



3. SETTLEMENT

The Parties agree to settle the review application insofar as it relates to Dynamic Power and Dynamic Power's High Court Case as follows –

3.1 Dynamic Power:

3.1.1 agrees and consents to the Special Tribunal granting relief in prayers 1.1 and 2.1 of the Notice of Motion (as amended) filed by the Applicants in the review application; and

3.1.2 abides by any decision and order that the Special Tribunal or any court(s) of review or appeal may make or grant in respect of the Second to Twelve Respondents in the review application;

3.2 Dynamic Power agrees that it is indebted to Transnet for the following amounts in terms of the review application:

R 8,540,641.00	Being the value of forward cover and the bid price variation in respect of the generators as per the Generators contract.
R 6,731,092.71	Interest on the forward cover and bid price variation calculated at a rate of 9.75%, which was the applicable interest rate on 26 February 2016. The interest rate has been kept fixed throughout the relevant period notwithstanding interest rate fluctuations.
R 2,760,600.00	Being the net profits for the Generators contract calculated at 6% of the value of the Generators contract being R46,010m (excluding VAT).
R 1,368,000.00	Being the net profits for the Maintenance contract calculated at 6% of the total value of the Maintenance contract being R22,8m (excluding VAT).
R 2,000,500.00	Contribution towards the Applicants' legal fees.
R 21,400,833.71	Total for the review application

3.3 Transnet acknowledges its indebtedness to Dynamic Power in the amount of R 18,309,227.95 in respect of invoices that form the basis of Dynamic Power's High Court Case.



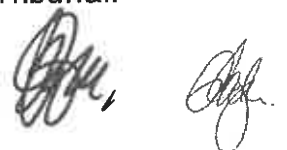
- 3.4 The Parties have agreed that the amount owed by Transnet to Dynamic Power in Dynamic Power's High Court Case shall be set off against the amount owed by Dynamic Power to Transnet in the review application, which will result in a remaining amount of R 3,091,605.76 ("**the debt**") still owing by Dynamic Power to Transnet.
- 3.5 The Parties have agreed that Dynamic Power shall settle the debt to Transnet in three equal instalments as follows:
- 3.5.1 The first payment shall be made on 3 March 2025;
- 3.5.2 The second payment shall be made on 3 April 2025; and
- 3.5.3 The final payment shall be made on 3 May 2025.
- 3.6 All payments in terms of this Agreement shall be paid into the following account (with proof of each payment to be dispatched by electronic mail to Mxolisi Ngubane and Sue Albertyn at Mxolisi.Ngubane@transnet.net / Sue.Albertyn@transnet.net):

ACCOUNT NAME:	Transnet SOC Ltd -Transnet Corporate Centre
BANK:	First National Bank
ACCOUNT NUMBER:	62861888596
BRANCH CODE:	255005
REFERENCE:	SIU and Transnet settlement

- 3.7 If Dynamic Power fails to make payment of any amount referred to in clauses 3.4 and 3.5 above on the due date –
- 3.7.1 such amount will become immediately due, owing and payable by Dynamic Power to Transnet; and
- 3.7.2 Transnet and/or the SIU shall be entitled to approach the Special Tribunal, or any appropriate court, to issue a writ of execution and/or for other appropriate relief (e.g. contempt of tribunal/court proceedings etc.) against Dynamic Power in respect of payment of such amount, including interest thereon at the prescribed rate.

4. ORDERS OF THE SPECIAL TRIBUNAL / HIGH COURT

- 4.1 The Parties agree to make this Agreement an order of the Special Tribunal.



4.2 The Parties hereby undertake to depose to and provide the relevant affidavits, if so required, in support of the application(s) to have this Agreement made an order of the Special Tribunal.

5. FULL AND FINAL SETTLEMENT

5.1 This Agreement constitutes the full and final settlement of Dynamic Power's High Court Case and any and all invoices, whether submitted or outstanding, that Dynamic Power has or may have against Transnet arising from the:

5.1.1 NEC3 Term Service Contract between Transnet and Dynamic Power for the duration of 3 May 2019 to 3 May 2024; and

5.1.2 The instruction to undertake emergency repairs pursuant to the April 2022 floods in the KwaZulu-Natal.

5.2 Dynamic Power warrants that, to the best of its/their knowledge, no undisclosed matters exist that are known to it/them but not to Transnet and/or the SIU that could give rise to any claim by Transnet and/or the SIU against Dynamic Power as contemplated in clause 5.3.

5.3 Based on and subject to clause 5.5 and the warranty in clause 5.2 and the contents of clause 5.4, neither Dynamic Power on the one hand nor Transnet and the SIU on the other hand shall have any claim of any nature whatsoever against the other arising from the subject matter of the review application or Dynamic Power's High Court Case.

5.4 The Parties agree that this Agreement shall not extend to, cover, or provide any protection, defence, or indemnification in respect of any disciplinary/criminal proceedings, administrative proceedings, regulatory enforcement actions, or similar legal or other proceedings that may be initiated against Dynamic Power that is not a civil claim as contemplated in clause 5.3 above. Nothing in this Agreement shall be construed to limit, waive, or otherwise affect the rights of Transnet and/or the SIU to bring such proceedings.

5.5 Dynamic Power shall upon Signature Date, but not later than two (2) days thereof serve on Transnet and file with the High Court its notice of withdrawal of Dynamic Power's High Court Case.



5.6 The notice referenced in clause 5.5 shall be served upon Transnet's legal representatives, as appointed in Dynamic Power's High Court case, at the following addresses and/or contact details:

Motsoeneng Bill Attorneys Inc.
Attention: Aristidis Perivolaris
85 Western Service Road
Wendywood
Sandton
2090
Tel: (+27) 11 463 9401
Email: aristidis@mbaincorporated.co.za /
evanah@mbaincorporated.co.za

6. COSTS

6.1 Each Party shall bear its own costs incurred in respect of the negotiations leading to this Agreement and all related attendances, including the application(s) to have this Agreement made an order of the Special Tribunal and/or the High Court.

7. ADDRESSES FOR SERVICE OF LEGAL PROCESS AND NOTICES

7.1 The Parties choose for the purposes of this Agreement the following addresses, telephone numbers and email addresses:-

7.1.1 Transnet: Bowman Gilfillan Inc.
11 Alice Lane
Sandton
Johannesburg
2146
Tel: (011) 699 9433 / 9360
Email: khomotso.makapane@bowmanslaw.com /
rosalind.davey@bowmanslaw.com /
soraia.machado@bowmanslaw.com
Attention: Khomotso Makapane

7.1.2 The SIU: Bowman Gilfillan Inc.



11 Alice Lane
Sandton
Johannesburg
2146
Tel: (011) 699 9433 / 9360
Email: khomotso.makapane@bowmanslaw.com /
rosalind.davey@bowmanslaw.com /
soraia.machado@bowmanslaw.com
Attention: Khomotso Makapane

7.1.3 Dynamic Power : Majavu Inc.
170 Columbine Avenue
Majavu House
Mondeor
Marshalltown
2107
Tel: (011) 941 1525 / 3279 / 2960
Email: zola@majavuattorneys.co.za

7.2 Any legal process to be served on any of the Parties may be served on such Party at the physical address specified for it in clause 7.1 and it chooses that address as its *domicilium citandi et executandi* for all purposes under this Agreement.

7.3 Any notice or other communication to be given to any of the Parties in terms of this Agreement shall be valid and effective only if it is given in writing, provided that any notice given by telefax or email shall be regarded for this purpose as having been given in writing.

7.4 Each notice by email to a Party at the email address specified for it in clause 7.1 shall be deemed to have been received (unless the contrary is proved) within one day of transmission if it is transmitted during normal business hours of the receiving Party or within one day of the beginning of the next Business Day after it is transmitted, if it is transmitted outside those business hours.

7.5 Notwithstanding anything to the contrary in this clause 7, a written notice or other communication actually received by any of the Parties (and for which written receipt

Two handwritten signatures in black ink are located at the bottom right of the page. The first signature is larger and more stylized, while the second is smaller and more cursive.

has been obtained) shall be adequate written notice or communication to it notwithstanding that the notice was not sent to or delivered at its chosen address.

7.6 Any Party may by written notice to the other Parties change its physical or email for the purposes of this clause 7 to any other physical or email provided that the change shall become effective on the seventh day after the receipt of the notice.

8. GENERAL

8.1 This Agreement contains all the express provisions agreed on by the Parties with regard to the subject matter in this Agreement and the Parties waive the right to rely on any alleged provision not contained in this Agreement.

8.2 No Party may rely on any representation that allegedly induced that Party to enter into this Agreement, unless the representation is recorded in this Agreement.

8.3 No conduct or contract varying, adding to, deleting from, novating or cancelling this Agreement (including of this clause), and no waiver of any right under this Agreement, shall be effective unless reduced to writing and signed by or on behalf of the Parties.

8.4 No indulgence granted by a Party shall constitute a waiver or abandonment of any of the Parties' rights under this Agreement; accordingly, that Party shall not be precluded, as a consequence of having granted that indulgence, from exercising any rights against the other Party which may have arisen in the past or may arise in the future.

8.5 No agreement purporting to vary the terms of this Agreement (including of this clause) shall be of any force or effect unless it is reduced to writing and signed by the Parties.

8.6 This Agreement is governed by the laws of the Republic of South Africa.

8.7 Each Party shall do all such things, take all such steps and to procure the doing of all such things and the taking of all such steps as may be necessary, incidental or conducive to the implementation of the provisions, terms, conditions and import of this Agreement.



- 8.8 This Agreement may be signed in any number of counterparts, all of which taken together shall constitute one and the same instrument. Any Party may enter into this Agreement by signing any such counterpart.
- 8.9 In the event of any condition set out in this Agreement being a nullity, such condition shall be severable from the other conditions set out in this Agreement. The unaffected conditions shall remain of full force and effect.

SIGNATURE PAGE TO FOLLOW

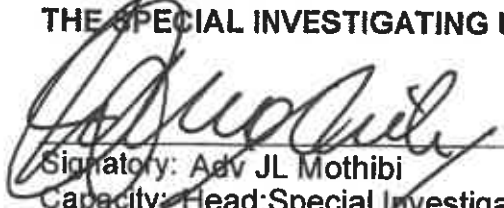


SETTLEMENT AGREEMENT : SUPERFECTA TRADING 209

Pretoria

SIGNED at Hte on this the 11th day of February 2025.

For and on behalf of
THE SPECIAL INVESTIGATING UNIT



Signatory: Adv. JL Mothibi
Capacity: Head: Special Investigating Unit
Who warrants his/her authority hereto

SIGNED at Johannesburg on this the 7th day of February 2025

For and on behalf of
TRANSNET SOC LIMITED



Signatory: Adv. Sandra Coetzee
Capacity: Chief Legal Officer
Who warrants his/her authority hereto

SIGNED at Albion on this the 10 day of February 2025

**DYMANIC POWER ENGINEERING
PROPRIETARY LIMITED**



Signature
Capacity: The First Respondent in the review application and the Applicant in the liquidation application.
Who warrants his/her authority hereto