



IN THE COMPANIES TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA

CASE NO: CT01756/ADJ/2024

In ex parte application of:

Mount Edgecombe Country Club Estate Management Association (RF)

NPC Registration Number: 1995/012432/08)

APPLICANT

Coram: Nomagcisa Cawe

Decision handed down on 21 July 2024

DECISION (Reasons and Order)

A. INTRODUCTION AND BACKGROUND FACTS

- [1] This is an *ex parte* application for an exemption from the requirement to appoint a Social and Ethics Committee (“SEC”) in terms of section 72(5)(b) read with section 72(6) of the Companies Act, 2008 (Act No. 71 of 2008) (“the Act”).
- [2] The Applicant in this matter is Mount Edgecombe Country Club Estate Management Association II (RF) NPC (“NPC”), which is a non-profit company duly registered in terms of the company laws of the Republic of South Africa. The Applicant’s business address has not been supplied by Mr James Berry, the person who signed the Form 142 on behalf of the Applicant, or Mr Gary Neil Goud, the Chairman of the NPC.
- [3] The application is supported by an Affidavit deposed to by Gary Neil Goud (“Goud”) who is the Chairman of the Applicant, duly authorized by the Board of Directors of the Applicant so to do.
- [4] It is stated in Goud’s Affidavit that Mount Edgecombe Country Club Estate’s (“the Estate”) Public Interest Score (PIS) currently exceeds 500 points,

primarily due to its large membership base, which comprises property owners thereat.

[5] The primary purpose of the Applicant is “maintaining, controlling, administering and managing the Estate, development, as well as providing security to such development. It does not engage in any extensive business activities or profit-making ventures.

[6] The Applicant currently has 900 owners of properties (“the owner members”) and approximately 17 employees.

[7] According to Goud the appointment of a Social and Ethics Committee would impose a significant burden on the organization, particularly in terms of financial resources and administrative obligations. Applicant’s total revenue for the year ended 31 March 2023 was R 35 862 677 .

[8] No services are rendered by the Applicant beyond the perimeter of the Estate.

[9] The Applicant only falls into the ambit of requiring the establishment of an SEC as a result of its membership being based on owning a property on the Estate. If the internal membership of homeowners on the Estate is excluded from the public interest score calculation, the Applicant would not come anywhere near the 500 PIS points. The Applicant would then not require the establishment of an SEC.

B. APPLICABLE LAW

[10] Regulation 43(2) of the 2011 Regulations provides that a company to which regulation 43 applies must appoint an SEC unless if the company in question:

10.1 **is a subsidiary of another company that already has an SEC, and an SEC of that other company will perform the functions required by regulation 43 of the Regulations on behalf of that subsidiary company; or**

10.2 **has been exempted by the Companies Tribunal in accordance with section 72 (5) and (6) of the Act.** [Own emphasis added.]

[11] In terms of section 72 (5) a company that falls within a category of companies that are required, in terms of section 72(4) and Regulation 43, to appoint an SEC may apply to the Companies Tribunal, in the prescribed manner and form, for an exemption from that requirement, and the Companies Tribunal may grant such an exemption if it is satisfied that:

11.1 **the company in question is required in terms of other legislation to have, and does have, some form of formal mechanism within its structures that substantially performs the function that would otherwise be performed by an SEC in terms of section 72 and regulation 43 of the Regulations¹; or**

¹ Refer to section 72(5)(a) of the Act.

11.2 **it is not reasonably necessary in the public interest to require the company to have an SEC, having regard to the nature and extent of the activities of the company**². [Own emphasis added.]

[12] In the current application, the Applicant is seeking an exemption from appointing an SEC on the basis that it is not reasonably necessary in the public interest, as contemplated in section 72(5)(b) of the Act, to require the Applicant to appoint an SEC, having regard to the nature and extent of the Applicant's activities, particularly in relation to the functions of an SEC as set out in Regulation 43(5).

C. EVALUATION OF THE MERITS AND FINDINGS

[13] The Applicant only falls into the ambit of requiring the establishment of an SEC as a result of its membership which is based on owning a property on the Estate. If the internal membership of homeowners on the Estate were to be excluded from the Public Interest Score calculation, the Applicant would not come anywhere near the required 500 points. This would then mean the Applicant would not be required to establish an SEC.

[14] The emphasis is on the fact that the main object for which the Applicant was

² Refer to section 72(5)(b) of the Act.

formed was for the purpose of managing the Estate for the benefit of all of its members. For a determination to be made herein, the Applicant's current activities ought to be considered against the purpose and functions of an SEC as stated in regulation 43(5) of the Regulations.

[15] As outlined in regulation 43(5) of the Regulations, the role of an SEC is, in the main, to look into compliance on social and ethics issues including, but not limited to, the following:

15.1 triple bottom reporting;

15.2 economic, social and environmental sustainability as provided for in the United Nations Global Reporting Initiatives;

15.3 decent work;

15.4 procurement;

15.5 transformational goals;

15.6 human rights, labour standards;

15.7 anti-corruption; and

15.8 all issues falling within its mandate.

[16] However, whether a company should establish an SEC should be determined based on the prevailing circumstances of each applicant company. One does not have to follow a one-size-fit- all approach when evaluating applications of whether an exemption should be granted or not.

[17] The Applicant had previously applied and was granted an exemption by the Companies Tribunal (see CTO5Mar2014). Goud, in his Founding Affidavit, avers that nothing has changed since the last exemption was granted in 2014. I have no reason to question Goud's averment, inspite of the lapse of time.

[18] Based on what is stated above, especially the nature and extent of the Applicant's activities, it is my view that, it is not reasonably necessary in the public interest to require the Applicant to appoint an SEC. I accept that the Applicant's activities are mainly limited to owning and managing the facilities and operations of the Estate for the benefit of all its members. Therefore, I am persuaded that the Applicant qualifies for an exemption from establishing a Social and Ethics Committee for a period of 5 (five) years, from the date hereof.

D. ORDER

[19] I therefore make the following order:

19.1 The application for the exemption of the Applicant from appointing a Social and Ethics Committee is granted for a period of 5 (five) years from date hereof.

N CAWE: MEMBER of the Companies Tribunal

21 July 2024