

COMPANIES TRIBUNAL
of
THE REPUBLIC OF SOUTH AFRICA

Case Number CT00460ADJ2020

In the Ex Parte Application

NORILSK NICKEL AFRICA PROPRIETARY LIMITED

Applicant

(Registration number 2015/397182/06)

In respect of

**AN EX PARTE APPLICATION FOR AN EXEMPTION FROM THE REQUIREMENT
TO APPOINT A SOCIAL AND ETHICS COMMITTEE**

Presiding Member of the Tribunal; Lucia Glass

DECISION (Reasons and Order)

INTRODUCTION

1.The Applicant applies to the Tribunal, in terms of Section 72(5) of the Companies Act 71 of 2008 (further herein referred to as 'the Act') for an exemption, from the requirement to appoint a Social and Ethics Committee, on the basis that it is neither reasonably necessary nor is it in the public interest for the company to have a Social and Ethics Committee.

PRELIMINARY ISSUES AND FACTS

2. The Deponent to the Applicant's founding affidavit is MICHAEL PATRICK MARRIOTT who alleges that he is the Chief Executive Officer of the Applicant, and is duly employed as such by the Applicant. He attaches to his affidavit, a Resolution by the Board of the Applicant authorising him to depose to his affidavit on behalf of the Applicant.

3. It is averred that the Applicant and African Rainbow Minerals Ltd ("ARM") are 50/50 joint venture partners of Nkomati Mine, which is the Applicant's sole asset in South Africa.

4. It is alleged that the Applicant and ARM, reached an agreement in 2019, to gradually scale down the production of Nkomati Mine, with the view, to place the mine in a care and maintenance mode, in preparation for closure. Pending closure, they jointly decided that ARM, will continue to perform the required functions of the Social and Ethics Committee in terms of Regulation 43(5)(a) of the Act, of Nkomati Mine, and that it would not reasonably be necessary nor desirable for the Applicant to also maintain a separate Social and Ethics Committee.

5. It is further averred that, if the Applicant develops a Social and Ethics Committee, in respect of the Nkomati Joint Venture, it would be superfluous and might result in the duplication and possible conflict of duties performed by ARMS's established Social and Ethics Committee performed in terms of the Act for the Nkomati Joint Venture.

THE LAW

6. The applicable Section of the Act is:

Section 72 (5) (b) *"it is not reasonably necessary for the public interest to require the company to have a social and ethics committee having regard to the nature and extent of the activities of the company."*

APPLICATION OF THE LAW TO THE FACTS

7. The Tribunal is to decide, whether in terms Section 72 (5) *b) it is reasonably necessary for the public interest to require the company to have a social and ethics committee having regard to the **nature and extent of the activities of the company** (emphasis added).*

8. I will weigh up the nature and extent of the Applicant. The Applicant is in a joint venture with ARM, where ARM has developed a Social and Ethics Committee, in respect of their Joint Venture, Nkomathi Mine. The nature of the Applicant is one where its sole asset, is its 50% share in Nkomathi Mine Joint Venture, where ARM is responsible for the Social and Ethics Committee.

CONCLUSION AND DECISION

9. I agree with the Applicant that if the Applicant is to establish a further Social and Ethics Committee, over Nkomathi Mine Joint Venture, it would be superfluous and may result in the duplication and possible conflict of the duties performed by the Social and Ethics Committee already in existence.

10. After considering the law, interpreting and applying Section 72 (5) (b) of the Act, it is my view that it is not reasonably necessary for the public interest to require the company to have a social and ethics committee having regard to the nature and extent of the activities of the company as stated above.

11. In this case, it is quite clear to me, that the Applicant is to be exempted from appointing a Social and Ethics committee.

ORDER

I accordingly make the following order;

The Applicant is granted exemption from appointing a Social and Ethics Committee for a period of 5 years.

LUCIA GLASS

MEMBER OF THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Dated 30.9.20