IN THE COMPANIES TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA

("The Tribunal") **CASE NO: CT00527ADJ2020**

In the matter of:

Sasria Soc Ltd

(1979/000287/06) **THE APPLICANT**

Coram K. Tootla

Decision delivered on 16 December 2020

DECISION

INTRODUCTION:

[1] Mr. Mavuso, the Company Secretary of the Applicant Company, makes an application in terms of Section 61 (7) of the Companies Act 71 of 2008 ("Act"), for an administrative order to extend the period within which the Company's annual general meeting ("AGM") was to be held (on 13 December 2020).

[2] The applicant made this application before the AGM date and the application was served on the Tribunal on 8 December 2020.

BACKGROUND:

[3] The Applicant is Sasria Soc Ltd., a state owned company ("company") as defined in Section 1 of the Companies Act, and whose registered address is at 36 Fricker Road, Illovo, Sandton, Johannesburg.

[4] The applicant states on form CTR 142 and the supporting affidavit that the reason for the application for the extension is that the Board of Directors resigned in September 2019. The Minister reconstituted the new Board and directors were appointed by the Cabinet in June 2020. There were other delays caused by the verification and approval of the Board by the Prudential Authority and the FSCA which would only be completed in December 2020.

[5] Furthermore, the external auditors were appointed by the shareholder on 28 September 2020 and the Auditor- General confirmed their appointment on 21 October 2020. Hence it is being submitted that the delay in the appointment of the Board affected the appointment of the auditors which led to the delay in the completion of the audit process for 2018/2019 financial year.

[6] It is also submitted by Mr. Mavuso that the delay in submitting the application for the extension of the AGM was not as a result of any issues of governance or financial difficulties but rather logistics caused by the late appointment of the Board of Directors. He also advises that the annual financial statements (AFS) for 2018/2019 have been submitted to the Minister for tabling in Parliament in line with the requirements of the Public Finance Management Act.

[7] However, the Board of Directors had occasion to meet on 30 November 2020 to approve and consider some of the remaining AGM agenda items. Mr. Mavuso mentions that the AGM on 13 December 2020 would result in non-compliance with Section 62 (1) (a) of the Act in respect of delivery of the AGM notice in the prescribed manner.

APPLICABLE LAW:

[8] The provisions of the Act applies to the Applicant in so far as Section 9 (1) states that "subject to Section 5 (4) and (5), any provision that applies to a public company applies to a State owned Company (such as the Applicant-my words), except to the extent that the Minister has granted an exemption in terms of subsection 3"

[9] Since the Applicant is subject to the provisions in the Act that apply to public companies, the applicant is required in terms of section 61(7) (b) of the Companies Act 71 of 2008 (the Act) to hold its subsequent AGM not more than 15 months from the date of its previous one. According to the Applicant it requires an extension of time until 31 January 2021 to hold an AGM.

[10] Section 61(7)(b) of the Companies Act allows a public company not in a position to convene its AGM within the prescribed 15 months after the date of its previous AGM to approach this Tribunal for an extension of the time. This Tribunal has jurisdiction to extend the time on good cause shown by such an applicant.

EVALUATION:

[11] In view of the aforementioned reasons presented by the applicant, it seems the Applicant is stating that this constitutes "good cause" to be granted an extension of time to hold its AGM later, by 31 January 2021. However, "good cause" is neither defined nor explained in the Act. In the decision of the Minister of Defence and Military Veterans v Motau and Others (2014(5) SA 69 (CC) 89 at par 54), the Constitutional Court, stated "*Good cause may be defined as a substantial or 'legally sufficient reason' for a choice made or action taken. Assessing whether there is good cause for a decision is a factual determination dependent upon the particular circumstances of the case at hand*."

[12] Section 61(7) of the Act provides that "a public company must (my emphasis) convene an annual general meeting of its shareholders initially, no more than 18 months after the company's date of incorporation; and thereafter, once in every calendar year, but no more than 15 months after the date of the previous annual general meeting, or within an extended time (my emphasis) allowed by the Companies Tribunal, on good cause shown (my emphasis)".

[13] The application was brought before the 15 month period. Thus the next AGM should accordingly be convened no more than 15 months after the date of the previous AGM. alternatively an extension of time granted by the Tribunal to meet the requirements of Section 61 (7) (b).

[14] Section 61 (7) of the Act gives the Tribunal a discretion to grant an extension "on good cause shown" for the holding of the AGM by a public company. The discretion of the Tribunal in terms of Section 61 (7) is to grant an extended time within which to hold the AGM. This discretion is not unlimited and the section is clear that the AGM must be held within an "extended time", i.e. a period within which or the date by when the AGM must be held.

[15] Having considered the application based on the aforementioned reasons, I am satisfied that the Applicant has shown good cause for the extension of the period to convene its AGM.

ORDER:

[16] An administrative order for an extension is hereby granted to hold the AGM of the applicant company by no later than 31 January 2021.

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Khatija Tootla

Member of the Companies Tribunal

16 December 2020