IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Case No: CT01072/ADJ/2022

In the *ex parte* application of:

BRIDGESTONE CORPORATION **APPLICANT**

Presiding Member of the Companies Tribunal: ISHARA BODASING

Date of Decision: 01 July 2022

DECISION (Reasons and an Order)

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1. INTRODUCTION

1.1. This application is lodged in terms of Regulation 7(3) of the Companies Regulations[1] of the Companies Act 71/2008 ("the Act"), read with section 160 thereof, for an order of substituted service on Bridgestone Project Managers (Pty) Ltd ("BPM"); a company duly incorporated in terms of the company laws of South Africa with registration nr: 2015/165912/07 and having its registered office at 163 Malcolm Road, Ext.3, Poortview, Gauteng, 1733.

1.2. Applicant is Bridgestone Corporation, a company duly registered and incorporated under the company laws of Japan, with its registered office at 1-1, Kyobashi 3-chome, Chuo-ku, Tokyo, Japan.

[1] GNR 351 of 265 April 2011

1.3. In this *ex parte* application, Bridgestone Corporation seeks an order authorising the service of its intended application to object against the name Bridgestone Project Managers, to be effected by way of substituted service. Its previous attempt to obtain an order for BPM's name to be declared unsatisfactory of the provisions of the Act, was unsuccessful due to insufficient service.

2. BACKGROUND

2.1. On 22 June 2022 Applicant approached this Tribunal on the basis that the Sheriff for the District of Roodepoort twice indicated that neither the letter of demand[2] nor the application lodging a name dispute[3] could be served on BPM. The founding affidavit was deposed to by Applicant's legal representative: Shane Moore, a Managing Partner of Moore Attorneys Incorporated.

2.2. Applicant had approached this Tribunal to object to BPM's name without success.[4] The presiding member suggested that an application for substituted service be lodged.

2.3. The relief sought by Applicant *in casu* is

a. an order for substituted service by way of publication of a notice of the application for relief allocated case number **CT00736/ADJ/2021** in two local English newspapers circulating in the area, one being a newspaper in that area and another being a community newspaper circulating in that area; and

b. that the said notices of the application remain in the newspapers for a period of 20 (twenty) business days from the date it is advertised, before the Applicant's application in respect of the name dispute is to be heard by the Tribunal.

[2] Annexure SS4 of Application: service attempted in June 2018
[3] Annexure SS8 of Application: service attempted in July 2021
[4] CT00736/ADJ/2021

3. ISSUES

The issue to be decided is whether or not Applicant has made out a case for leave to deliver its name objection application by way of substituted service.

4. APPLICABLE LAW

4.1 Companies Regulation 7 provides *inter alia* as follows:

"(1) A notice or document to be delivered for any purpose contemplated in the Act or these regulations may be delivered in any manner—

(a) contemplated in section 6 (10) or (11); or

(b) set out in Table CR 3.

...

(3) If, in a particular matter, **it proves *impossible* to deliver a document in any manner provided for in the Act or these regulations** (my emphasis) –

(a) if any person other than the Tribunal is required to deliver the document, the person may apply to either the Tribunal or the High Court for an order of substituted service; or

(b) if the Tribunal is required to deliver the document, the recording officer of the Tribunal concerned may apply to the High Court for an order of substituted service."

4.2 Section 6(9) of the Act provides as follows:

"*(9) If a manner of delivery of a document, record, statement or notice is prescribed in terms of this Act for any purpose*

(a) it is sufficient if the person required to deliver such a document, record, statement or notice does so in a manner that satisfies all of the substantive requirements as prescribed; and

(b) any deviation from the prescribed manner does not invalidate the action taken by the person delivering that document, record, statement or notice, unless the deviation-

(i) materially reduces the probability that the intended recipient will receive the document, record, statement or notice; or

(ii) is such as would reasonably mislead a person to whom the document, record, statement or notice is, or is to be, delivered."

5. **EVALUATION**

5.1 Against the backdrop of the provisions above, it appears that deviation from the manner prescribed for the delivery of documents in terms of the Act, read with the Regulations, requires:

a. that, the deviation ought not "materially [reduce] the probability that the intended recipient will receive the document...or notice", and
b. that, the deviation ought not to be "such as would reasonably mislead a person to whom the document...or notice is, or is to be, delivered."

5.2 The jurisdiction of this Tribunal is limited to instances, as prescribed in Regulation 7(3), when it "proves impossible to deliver a document in any manner provided for in the Act or these regulations." Furthermore, Applicant bears the onus of satisfying this Tribunal that the specific manner of service sought is warranted, since none of the normal forms of service set out in the rules could be effected.

5.3 It is trite that an application for substituted service should only succeed if the applicant has set out:

"(a) the nature of and extent of the claim;
b) the grounds upon which the court has jurisdiction to entertain the claim;
c) the manner of service of which the court is asked to authorise;
d) the last known whereabouts of the person to be served;
e) the inquiries which have been made to ascertain the present whereabouts; and
(f) any information which may assist the court in deciding whether leave should be granted and, if so, on what terms."[5]

[5] See D Harms *'Civil Procedure in the Superior Courts'*, Service Issue 44 (2011) at B-20.

5.4 The following remarks from *Grand Parade*[6] are relevant for a determination to be made in this matter:

"*When entertaining an application for a substituted service order, this Tribunal has to be always satisfied that, the substituting method of delivery will ensure that the notice will come to the knowledge of the intended recipients. This is not unique to this Tribunal as our courts, including our highest courts (being the Supreme Court of Appeal and the Constitutional Court) albeit in respect of section 129 and 130 of the National Credit Act 34 of 2005, have been devoting a considerable amount of effort towards ensuring notice or knowledge of processes come to the attention of those intended when delivery by way of registered post is involved.*"

5.5 The aim of this type of service remains to inform the party concerned of a particular notice. In *Pretoria City Council v Ismail*[7], Schreiner, J stated the following:

"Substituted service is a way of achieving in law the same result as if the proceedings, notice or order, or whatever the matter may be, had been brought to the notice of the persons affected. It is not a way of establishing that such notice or other matter was actually brought to the notice or knowledge of the person affected; it takes the place of bringing such notice or other matter to his knowledge. So, in ordinary litigation, the summons may with the Court's leave be served by posting or by publication or in some other manner; and when that is done, there is no doubt that the service is just as operative and has the same legal results as if the party who had to be served was presented with a copy of the document to be served."

5.6 Although Applicant has not argued on the papers that there is a real likelihood that the notices would be brought to the attention of BPM, I am swayed by the fact that the Sheriff has twice indicated that the address of BPM does not exist.

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[6] *Ex Parte Grand Parade Investments Limited,* Companies Tribunal, Case Number: CT010FEB2014, dated 08 May 2014 at par [11] and the authorities cited there

[7] 1938 TPD 246 @ 252

6. **FINDINGS**

6.1 Considering what is stated above, the facts provided confirm that it has proven impossible to deliver the name objection application in any manner provided for by the Companies Act and its Regulations. The Sheriff has confirmed that the address recorded as that of BPM is incorrect or untraceable. This very address also serves as BPM's postal address, and the postal and residential address of its sole directors. Therefore, it is impossible to use this address for hand delivery or postage of the impugned documents.

6.2 I therefore make an order in favour of Applicant as below.

7. ORDER

7.1 An order is granted for substituted service by way of publication of a notice of the application for relief allocated case number **CT00736/ADJ/2021** in two local English newspapers circulating in the area, one being a newspaper in that area and another being a community newspaper circulating in that area;

7.2 Furthermore, the said notices of the application should remain in the newspapers for a period of 20 (twenty) business days from the date it is advertised, before the Applicant's application in respect of the name dispute is to be heard by the Tribunal.

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ADV. ISHARA BODASING