

THE COMPANIES TRIBUNAL OF SOUTH AFRICA

CASE NO: CT009Jul2015

In the matter regarding:

Zhou's Enterprise International Trade (Proprietary) Limited (Registration number: 1999/016588/07) Applicant

And

African Belting and Conveyors (Proprietary) Limited (Registration number: 2011/141141/07) First Respondent

Michael Ian Henningsen (ID: 560928 5036 08 6) Second Respondent

Coram: S. Gounden

Decision handed down on 17 December 2015

DECISION

INTRODUCTION

[1] The Applicant applies in terms of section 61(11) (b) of the Companies Act 71 of 2008 ("Act" / "Companies Act") for an administrative order for convening a shareholders meeting.

BACKGROUND

[2] The Applicant is a private company, which has a 51% shareholding in the First Respondent. The sole director of the First Respondent is the Second Respondent, who is also the 49% shareholder of the First Respondent.

[3] The Applicant filed an application stated above, as prescribed by regulation 142 (1) (a), together with a supporting affidavit as required by regulation 142

(1) (b). Mr. Hon Pan Cheung has signed the affidavit and was duly authorised to act for and on behalf of the Applicant.

[4] The Applicant made numerous attempts to hold a shareholders meeting and was unsuccessful due to *inter alia* the unavailability of the Second Respondent.

ISSUES

[5] A resolution of the Board of the Applicant dated 26 April 2015 authorizing Hon Pan Cheung to act for and on behalf of the Applicant was included in the application.

[6] The Applicant requests that the Companies Tribunal issues an administrative order for shareholders meeting to be convened.

APPLICABLE LAW

[7] The jurisdiction of the Companies Tribunal is stated in section 61 of the Act and is as follows:

“(11) If a company is unable to convene a meeting as required in terms of this section because it has no directors, or because all of its directors are incapacitated –

(a) any other person authorised by the company’s Memorandum of Incorporation may convene the meeting; or

(b) if no person has been authorised as contemplated in paragraph (a), the Companies Tribunal, on a request by any shareholder, may issue an administrative order for a shareholders meeting to be convened on a date, and subject to any terms, that the Tribunal considers appropriate in the circumstances.”

EVALUATION

[8] The Applicant has loaned the First Respondent, which at 28 February 2014 amounted to R510 511 and the Applicant has supplied goods to the value of R1 236 128.

[9] The Applicant requires the financial statements to be presented at a shareholders meeting in order to assess whether the First Respondent has the resources to repay its debts.

[10] A shareholders meeting was convened by the Applicant on the 19 December 2014 in order to appoint new Directors. However, the Second Respondent did not attend.

[11] The attorneys of the Second Respondent wrote to the Applicant stating that the Second Respondent is incapacitated due to ill health.

FINDINGS

[12] The Applicant has shown good cause for the Companies Tribunal to grant its request.

ORDER

[13] The application for an administrative order for a shareholders meeting to be convened has been granted / allowed, subject to the following terms:

- at a date, time and venue to be agreed by all parties. However, such **shareholders meeting may not be held later than 30 days of the date of this order,**
- agenda to be agreed on by all parties,
- due notices must be given to all parties,
- all documentation for the meeting must be sent with the notice, and
- all other Companies Act requirements for convening the shareholders meeting must be adhered to

S. Gounden
COMPANIES TRIBUNAL

Pretoria

17 December 2015