

COMPANIES TRIBUNAL
of
THE REPUBLIC OF SOUTH AFRICA

Case Number CT011MAY2018

In the Ex Parte Application

NGK CERAMICS SOUTH AFRICA (PTY) LTD

Applicant

(Registration number 2008/003346/06)

In respect of

**AN 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 for an exemption, from the requirement to appoint a Social and Ethics Committee, as imposed by Section 72(4) of the Companies Act 71 of 2008 (further herein referred to as 'the Act').
2. This Application is made, in terms of Section 72(5) on the basis that its parent company has such a committee that performs substantially the same function as performed by a social and ethics committee.

PRELIMINARY ISSUES AND FACTS

3. The Deponent to the Applicant's founding affidavit is Osamu Sakai, who alleges that he is a director of the Applicant.
4. It is averred that the Applicant's parent company, being NGK Insulators Limited, has in terms of other legislation applicable to it, in its company of incorporation, to have, and it continues to have, some form of formal mechanism within its structure that substantially

performs the function that would otherwise be performed by the social and ethics committee in terms of section 72 of the Act and the regulations to the Act, namely its CSR Committee.

5. It is further averred that this CSR Committee has three subcommittees consisting of a Compliance Subcommittee, Security Subcommittee and a Social Contributions Subcommittee. The CSR Committee was formed as a result of and in order to comply with Article 362, Paragraph 4, item 6 of Companies Act 100 of Japan.

6. I will quote the applicable Section of the Act:

Section 72 (4)

“The Minister by regulation may prescribe

(a) A category of companies that must each have a social and ethics committee, if it is desirable in the public interest, having regard to

(i) annual turnover

(ii) workforce size or

(iii) nature and extent of the activities of such companies

Section 72 (5)

*A **company that falls within a category of companies** (emphasis added) that are required in terms of this section and the regulations to appoint a social and ethics committee may apply to the Tribunal in the prescribed manner and form for an exemption from that requirement and the Tribunal may grant such an exemption if it is satisfied that*

a) the company 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 the social and ethics committee, in terms of this section and the regulations or

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 firstly to decide, whether in terms Section 72 (4), the applicant falls within

“A category of companies that must each have a social and ethics committee, if it is desirable in the public interest, having regard to;

(i) annual turnover

(ii) workforce size or

(iii) nature and extent of the activities of such companies.”

At no stage in the affidavit does the applicant demonstrate that it falls within the categories of companies which the Minister has prescribed, to establish a social and ethics committee.

In this instance the request to be exempted is not necessary. The applicant ought first to demonstrate that it falls under the minister’s categories and if it does, then it must apply for an exemption which it does under Section 72 (5).

After considering the law, interpreting and applying Section 72 (4) and (5) of the Act to the facts, it is my view that it is not necessary for the applicant to have applied for exemption unless it does fall under the above minister’s categories. If it does fall under the above categories than it must re apply to the tribunal, stating which categories it does so fall. After which the tribunal will consider the exemption facts in respect of its other formal structure which exists and performs the function of a Social and Ethics Committee.

In this case, it is quite clear to me that the Applicant has not stated that it falls under the minister’s categories and thus has no reason to apply to be exempted from appointing a Social and Ethics committee.

Order

The Application is dismissed as the applicant need not appoint a social and ethics committee on the facts given.

LUCIA GLASS

MEMBER OF THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Dated 19.6.18