



IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA, PRETORIA

CASE NO: CT016Jul2018

In the matter between:

EMJ Distributors CC
(2007/128015/23)

Applicant

and

EMJ Distributors (Pty) Ltd
(2018/014840/07)

Respondent

Presiding Member of the Tribunal: Delport P.A.

Date of Decision : 27 November 2018

Decision

INTRODUCTION

- [1] The applicant applies for a default order, *inter alia*, that the respondent be ordered to change its name because it does not comply with s 11(2)(a) of the Companies Act 71 of 2008 (“Companies Act” / “Act”).
- [2] Regulations 142 and 153 of the Companies Act (GNR 351 of 26 April 2011) (“Companies Act regulations” / “regulations”) regulate an application to the Companies Tribunal (“Tribunal”) as well as the application for a default order

under certain circumstances.

- [3] The jurisdiction of the Tribunal in this matter is as determined in s 160 of the Companies Act.

BACKGROUND

- [4] Applicant is EMJ Distributors CC (2007/128015/23).

- [5] The respondent is EMJ Distributors (Pty) Ltd (2018/014840/07).

- [6] The affidavit in support of the CTR 142 in terms of reg 142, submitted to the Tribunal on 21 November 2018, was deposed by Jose Luis Gomes, a member of the applicant, who was authorised thereto by a resolution of the members of the applicant dated 24 October 2018.

- [7] The applicant lodged the CTR 142 application and the supporting affidavit with the Tribunal on 23 July 2018 according to the affidavit of Jose Luis Gomes and served it at the registered address of the respondent on 25 July 2018. The applicant did not quote the particular provision of the Act or the regulation that the application is based on.

- [8] The service on respondent was to a person who is “ostensibly a responsible employee” and complies material with the prescribed method as in Table 3 of Annexure 3 of the regulations. Nevertheless, the respondent received the service as it contacted the applicant subsequent to the service.

- [9] The respondent subsequently contacted the applicant telephonically and offered to change its name to EMJ Suppliers. This was not acceptable to the applicant based on advice provided to it and the applicant applies for a default order against the respondent.

APPLICABLE LAW

- [10] Section 160 of the Act, which is the basis for applications like these,

provides, as far as it is relevant for the present matter, as follows:

“160. Disputes concerning reservation or registration of company names.—(1) ... any other person with an interest in the name of a company, may apply to the Companies Tribunal in the prescribed manner and form for a determination whether the name, ..., satisfies the requirements of this Act.

(2) An application in terms of subsection (1) may be made—

(a) within three months after the date of a notice contemplated in subsection (1), if the applicant received such a notice; or

(b) on good cause shown at any time after the date of the reservation or registration of the name that is the subject of the application, in any other case.

(3) After considering an application made in terms of subsection (1), and any submissions by the applicant and any other person with an interest in the name or proposed name that is the subject of the application, the Companies Tribunal—

(a) must make a determination whether that name, or the reservation, registration or use of the name, or the transfer of the reservation or registration of the name, satisfies the requirements of this Act; and

(b) may make an administrative order directing—

(i) the Commission to—

(aa) reserve a contested name, or register a particular defensive name that had been contested, for the applicant;

(bb) register a name or amended name that had been contested as the name of a company;

(cc) cancel the reservation of a name, or the registration of a defensive name; or

(dd) transfer, or cancel the transfer of, the reservation of a name, or the registration of a defensive name; or

(ii) a company to choose a new name, and to file a notice of an amendment to its Memorandum of Incorporation, within a period and on any conditions that the Tribunal considers just, equitable and expedient in the circumstances, including a condition exempting the company from the requirement to pay the prescribed fee for filing the notice of amendment contemplated in this paragraph.”

[11] Section 11 of the Act, as far as it is relevant for the present matter, provides as follows

“(2) The name of a company must—

(a) not be the same as—

(i) the name of another company, domesticated company, registered external company, close corporation or co-operative;

...”

EVALUATION

[12] An application in terms of s 160, is qualified by sub-s (2) that provides:

“(2) An application in terms of subsection (1) may be made—

...

(b) on good cause shown at any time after the date of the reservation or registration of the name that is the subject of the application, in any other case.”

[13] In *The Highly Nutritious Food Company (Pty) Ltd v The Companies Tribunal and Others* (91718/2016) [2017] ZAGPJHC (22 September 2017) the Court said (para 18) that: “...Section 160(2)(b) allows any person and at any time to bring an application on good cause shown. This does not refer only to the delay in bringing the application but to show good cause as to why the application must be entertained. The section requires the applicant to furnish a reasonable explanation as to why the application should be entertained by the Tribunal. It does not require an explanation only as to the delay in bringing the application but refer (sic) to the merit of the application as well. It is section 160(1) that

prescribes, for a particular category of persons, to launch an application within the period of three (3) months after they became aware of the registration of the name. [19] It is my respectful view therefore that to evaluate good cause, the Tribunal was obliged to look at the whole matter including the merits to determine whether it was in the interests of justice to entertain the application.”

[14] The applicant brought this application within a year of the registration of the respondent. On balance therefore, it is the opinion of the Tribunal that on all the merits in considering the application, including the time within which the application was brought, that there is “good cause”.

[15] Section 11(2)(a) of the Act refers to a name that is the “same”. “Same” is *exactly identical*: See eg *Williams v Janse van Rensburg* (3) 1989 (4) SA 884 (C); *Century City Apartments Property Services CC and Another v Century City Property Owners Association* [2010] 2 All SA 1 (SCA). It is clear that the name of the respondent falls within this category.

ORDER

[16] The respondent’s name does not comply with s 11(2)(a)(i) of the Companies Act.

[17] The respondent is directed in terms of s 160(3)(b)(ii), to choose a name which does not consist of, or incorporate, “EMJ Distributors”.

[18] The respondent is to file a notice of an amendment of its Memorandum of Incorporation, within 60 days of receipt of this order in order to change its name as per para 17 above.

[19] There is no order as to costs

Prof P.A. Delpont
COMPANIES TRIBUNAL: MEMBER
27 November 2018