



**IN THE COMPANIES TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA
("THE TRIBUNAL")**

CASE NUMBER: CT012MAY2019

In the matter of:

AMIR HOSSEIN REZAEI

APPLICANT

and

SEYEDREZA SEYED NIKKHOO

RESPONDENT

IN RE: SINA PETROLEUM AND GAS (PTY) LTD ("the Company")

Coram: PJ Veldhuizen

Date of Hearing: Not Applicable – Default Application on Papers

Order delivered: 12 July 2019

ADMINISTRATIVE ORDER & REASONS

A. INTRODUCTION

1. THE PARTIES

- 1.1. The Applicant is **AMIR HOSSEIN REZAEI** ("the Applicant"), an adult male businessman and director of the Company.
- 1.2. The Respondent is **SEYEDREZA SEYED NIKKHOO** ("the Respondent"), an adult male businessman and a director of the Company.
- 1.3. The Company is **SINA PETROLEUM AND GAS (PTY) LTD**, a private company duly incorporated according to the company laws of the Republic of South Africa bearing registration number 2003/024520/07.

B. THE APPLICATION

2. This is an application in terms of Section 71(8) of the Companies Act 71 of 2008 ("the Act"), for an Administrative Order determining the removal of the Respondent as a director of the Company.
3. The Company has only two directors and shareholders, namely, the Applicant and the Respondent, respectively.
4. The Applicant commenced proceedings by filing an application as contemplated in Regulation 142 of the Act.¹

¹ **Regulation 142. Applications to the Tribunal in respect of matters other than complaints**

(1) A person may apply to the Tribunal for an order in respect of any matter contemplated by the Act, or these regulations, by completing and filing with the Tribunal's recording officer-

5. The application was served on **Carlos Filipa**, a receptionist at 15A Marion Street, Sandown, Sandton and this is acknowledged, in writing. The Respondent has indicated the aforementioned address as his address according to the CIPC records provided by the Applicant. In the premises, it is accepted that the application was served on the Respondent as contemplated in the Act.
6. The Respondent has failed to answer the application as contemplated in Regulation 143 of the Act.²

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- (a) an Application in Form CTR 142; and
 - (b) a supporting affidavit setting out the facts on which the application is based.

- (2) The applicant must serve a copy of the application and affidavit on each respondent named in the application, within 5 business days after filing it.
- (3) An application in terms of this regulation must-
 - (a) indicate the basis of the application, stating the section of the Act or these regulations in terms of which the Application is made; and
 - (b) depending on the context-
 - (i) set out the Commission's decision that is being appealed or reviewed;
 - (ii) set out the decision of the Tribunal that the applicant seeks to have varied or rescinded;
 - (iii) set out the regulation in respect of which the applicant seeks condonation; or
 - (c) indicate the order sought; and
 - (d) state the name and address of each person in respect of whom an order is sought.

² **Regulation 143. Answer**

- (1) Within 20 business days after being served with a Complaint Referral, or an application, that has been filed with the Tribunal, a respondent who wishes to oppose the complaint or application must-
 - (a) serve a copy of an Answer on the initiating party; and
 - (b) file the Answer with proof of service.
- (2) An Answer that raises only a point of law must set out the question of law to be resolved.
- (3) Any other Answer must be in affidavit form, setting out in numbered paragraphs-
 - (a) a concise statement of the grounds on which the complaint or application is opposed;
 - (b) the material facts or points of law on which the respondent relies; and
 - (c) an admission or denial of each ground, and of each material fact relevant to each ground, set out in the complaint or application.
- (4) An allegation of fact set out in an initiating document that is not specifically denied or admitted in an Answer must be regarded as having been admitted.

7. Accordingly, the Applicant applies to the Tribunal for a default order as contemplated in Regulation 153 of the Act.³

C. THE LEGISLATION

8. Section 71 of the Act governs the removal of directors.⁴

(5) In an Answer, the respondent must qualify or explain a denial of an allegation, to the extent necessary in the circumstances.

³ Regulation 153. Default orders

- (1) If a person served with an initiating document has not filed a response within the prescribed period, the initiating party may apply to have the order, as applied for, issued against that person by the Tribunal.
- (2) On an application in terms of sub-regulation (1), the Tribunal may make an appropriate order-
 - (a) after it has heard any required evidence concerning the motion; and
 - (b) if it is satisfied that the notice or application was adequately served.
- (3) Upon an order being made in terms of sub-regulation (2), the recording officer must serve the order on the person described in subsection (1) and on every other party.

⁴ Section 71 Removal of directors -

- (1) Despite anything to the contrary in a company's Memorandum of Incorporation or rules, or any agreement between a company and a director, or between any shareholders and a director, a director may be removed by an ordinary resolution adopted at a shareholders meeting by the persons entitled to exercise voting rights in an election of that director, subject to subsection (2).
- (2) Before the shareholders of a company may consider a resolution contemplated in subsection (1)-
 - (a) the director concerned must be given notice of the meeting and the resolution, at least equivalent to that which a shareholder is entitled to receive, irrespective of whether or not the director is a shareholder of the company; and
 - (b) the director must be afforded a reasonable opportunity to make a presentation, in person or through a representative, to the meeting, before the resolution is put to a vote.
- (3) If a company has more than two directors, and a shareholder or director has alleged that a director of the company-
 - (a) has become-
 - (i) ineligible or disqualified in terms of section 69, other than on the grounds contemplated in section 69 (8) (a); or
 - (ii) incapacitated to the extent that the director is unable to perform the functions of a director, and is unlikely to regain that capacity within a reasonable time; or
 - (b) has neglected, or been derelict in the performance of, the functions of director, the board, other than the director concerned, must determine the matter by resolution, and may remove a director whom it has determined to be ineligible or disqualified, incapacitated, or negligent or derelict, as the case may be.
- (4) Before the board of a company may consider a resolution contemplated in subsection (3), the director concerned must be given-

9. It is clear that where a company has fewer than three directors, the Tribunal enjoys jurisdiction to determine the removal of a director upon the application of either a director or shareholder.⁵

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- (a) notice of the meeting, including a copy of the proposed resolution and a statement setting out reasons for the resolution, with sufficient specificity to reasonably permit the director to prepare and present a response; and
- (b) a reasonable opportunity to make a presentation, in person or through a representative, to the meeting before the resolution is put to a vote.
- (5) If, in terms of subsection (3), the board of a company has determined that a director is ineligible or disqualified, incapacitated, or has been negligent or derelict, as the case may be, the director concerned, or a person who appointed that director as contemplated in section 66 (4) (a) (i), if applicable, may apply within 20 business days to a court to review the determination of the board.
- (6) If, in terms of subsection (3), the board of a company has determined that a director is not ineligible or disqualified, incapacitated, or has not been negligent or derelict, as the case may be-
- (a) any director who voted otherwise on the resolution, or any holder of voting rights entitled to be exercised in the election of that director, may apply to a court to review the determination of the board; and
- (b) the court, on application in terms of paragraph (a), may-
- (i) confirm the determination of the board; or
- (ii) remove the director from office, if the court is satisfied that the director is ineligible or disqualified, incapacitated, or has been negligent or derelict.
- (7) An applicant in terms of subsection (6) must compensate the company, and any other party, for costs incurred in relation to the application, unless the court reverses the decision of the board.
- (8) If a company has fewer than three directors-
- (a) subsection (3) does not apply to the company;
- (b) in any circumstances contemplated in subsection (3), any director or shareholder of the company may apply to the Companies Tribunal, to make a determination contemplated in that subsection; and
- (c) subsections (4), (5) and (6), each read with the changes required by the context, apply to the determination of the matter by the Companies Tribunal.
- (9) Nothing in this section deprives a person removed from office as a director in terms of this section of any right that person may have at common law or otherwise to apply to a court for damages or other compensation for-
- (a) loss of office as a director; or
- (b) loss of any other office as a consequence of being removed as a director.
- (10) This section is in addition to the right of a person, in terms of section 162, to apply to a court for an order declaring a director delinquent, or placing a director on probation.

⁵ Section 71(8)(b)

10. The Applicant shareholder or director is required to show any circumstance contemplated in section 71(3) which includes *inter alia* that a director has neglected, or been derelict in the performance of, the functions of a director.⁶

D. EVALUATION OF EVIDENCE

11. The Tribunal has considered the provisions of the Act, set out above and has had regard to the affidavit filed in support of this application by the Applicant.

11.1. The Applicant has testified *inter alia* that the Respondent:

11.1.1. Intentionally inflicted harm on the Company;

11.1.2. Acted in a fraudulent manner and / or attempted to do so;

11.1.3. Fraudulently misrepresented himself.

12. The Respondent has not filed an Answer to the application and is deemed therefore to have admitted the allegations set out in the Founding Affidavit.⁷

⁶ Section 71(3)(b)

⁷ Regulation 143(4) An allegation of fact set out in an initiating document that is not specifically denied or admitted in an Answer must be regarded as having been admitted.

13. The Tribunal is satisfied that the Respondent has neglected his duties as a director as contemplated in the Act.⁸
14. In the premises, the Tribunal is satisfied that Applicant has shown good cause as to why he should be entitled to the relief sought.

E. DECISION

15. The Respondent is removed as a director of the Company.

PJ VELDHUIZEN
MEMBER OF THE COMPANIES TRIBUNAL
CAPE TOWN

⁸ Section 71(3)(b)