



IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Case No: CT00345ADJ2020

Ex parte application:

**Mango Airlines SOC Ltd
(2006/018129/30)**

APPLICANT

Presiding Member of the Tribunal : PA Delport
Date of Decision : 6 May 2020

DECISION

INTRODUCTION

[1] The applicant applies to the Companies Tribunal in terms of section 61 (7) of the Companies Act 71 of 2008 (“Act” / “Companies Act”) and regulation 142 of the regulations in terms of the Companies Act (GNR 351 of 26 April 2011) (“Companies Act regulations” / “regulation/s”) for an extension to hold its annual general meeting (“AGM”).

BACKGROUND

- [2] The applicant is Mango Airlines SOC Ltd (“company”), a subsidiary of a state-owned company, South African Airways SOC Ltd. A state-owned company is a company that is incorporated in terms of the Companies Act and is listed as a public entity in schedule 2 of the Public Finance Management Act No. 1 of 1999. A subsidiary of such a company is also a state-owned company.
- [3] A state-owned company is not a public company, but the provisions in respect of public companies apply *mutatis mutandis* to a state-owned company: s 9(1) of the Act.
- [4] The company is therefore required to hold an AGM (s 61(7)) and such an AGM was held on 29 March 2018.
- [5] The subsequent AGM was then, in terms of s 61(7)(b), required to be held yearly but not more than 15 months from 28 March 2018 or within the extended time allowed by the Companies Tribunal on good cause shown.
- [6] On application to the Companies Tribunal, an extension was given to hold the AGM before 30 March 2020.
- [7] This application for and on behalf of the applicant, for an extension to hold the AGM, was brought by one Nico Bezuidenhout, the chief operating officer (“CEO”) and a director of the applicant.
- [8] The CEO was duly authorised to bring this application
- [9] The reason for the application (para 6 of the founding affidavit) is that the South African Airways SOC Ltd, the holding company, was placed in business rescue.

- [10] The financial statements of the applicant, as wholly owned subsidiary of South African Airways SOC Ltd, can therefore, under the circumstances, not be finalised for presentation to the annual general meeting.
- [11] The future of the company will also depend on the success of the business rescue of the holding company.
- [12] It must be added that, since the application regulation 398 of 25 March 2020 in terms of the Disaster Management Act N. 57 of 2002 instituted a complete lockdown, including certain gatherings (meetings) of people to contain the Covid-19 pandemic.
- [13] The lockdown obviously also applies to company meetings, whether held obligatory or voluntarily.

APPLICABLE LAW

- [14] Section 61 of the Companies Act provides as follows:
- “(7) A public company must convene an annual general meeting of its shareholders—
- (a) initially, no more than 18 months after the company’s date of incorporation; and
- (b) thereafter, once in every calendar year, but no more than 15 months after the date of the previous annual general meeting, or within an extended time allowed by the Companies Tribunal, on good cause shown.”

EVALUATION

- [15] Section 61(7) of the Act gives the Tribunal a discretion to grant an extension “on good cause shown” for the holding of the AGM by a public company. In terms of s 9(1) of the Act, the provisions in respect of public companies apply, with certain exceptions not applicable here, to state-owned companies.

[16] The question is whether there is “good cause”. “The Act does also not indicate what is to be understood by an application based on ‘good cause’. The requirement of ‘good cause’ to remove directors in terms of s 8(c) of the Armaments Corporation of South Africa Ltd Act No. 51 of 2003 was defined as a substantial or ‘legally sufficient reason’ eg for a choice made or action taken and assessing whether there is good cause for a decision it is a factual determination dependent upon the particular circumstances of the case at hand: *Minister of Defence and Military Veterans v Motau and Others* 2014 (8) BCLR 930 (CC), 2014 (5) SA 69 (CC) para 54.” *Henochsberg on the Companies Act 71 of 2008* 560(22).

[17] The subsidiaries of South African Airways SOC Ltd remain separate companies. However, the fact that the holding company has been unable to finalise financial statements and have it approved impacts the applicant in the finalisation of its financial statements, to be consolidated with that of the holding company. To require an AGM of the subsidiary (where financial statements need to be approved) under these circumstances is not logical.

[18] In terms of the lockdown regulations the holding of an AGM, other than electronically as prescribed in the Companies Act will, in any event, be impossible.

FINDING and ORDER

[19] An extension is hereby granted to hold the AGM of the applicant company before or on 30 March 2021.

SIGNATURE

P.A. Delport

COMPANIES TRIBUNAL: MEMBER