



IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Case No: CT00459ADJ2020

In the *ex parte* application of:

Afric Oil (Pty) Ltd

Applicant

(Registration number: 1995/001866/07)

Presiding Member of the Companies Tribunal: ISHARA BODASING

Date of Decision: 30 September 2020

DECISION (Reasons and an Order)

1. INTRODUCTION

1.1 Applicant is Afric Oil (Pty) Ltd, a company incorporated in terms of the company laws of South Africa, with registration number: 1995/001866/07, and with its registered address at 2nd Floor, Building 11, Design Quarter District, Leslie Avenue, Gauteng.

1.2 Applicant's Managing Director, Ahlben Dale Phillipus, duly authorised, deposed to an affidavit in support of this application.

1.3 This is an application in terms of Section 61(7)(b) read with Section 9(1) of the Companies Act 71 of 2008 ("the Act"), for an administrative order to extend the date for Applicant to hold its 2019 annual general meeting (AGM) to a date that is no later than 30 November 2020.

2. ISSUES

2.1 Paragraph 15.3.1 of Applicant's Memorandum of Incorporation (Mol) requires it to hold an AGM each year within six months after the end of each financial year (being end February). This means that Applicant would have had to convene its AGM by 31 August 2020.

2.2 Applicant states that the reason for its request is manifold, including that:

2.2.1 Due to Covid-19 and the resultant nationwide lockdown from 26 March 2020, its external auditors' access to information was impaired. Finalisation of the external audit was further exacerbated by the geographical location of its various subsidiaries; and

2.2.2 As part of the evidence required by the external auditors to sign off on the external audit, Applicant awaits a response from the Unemployment Insurance Fund (UIF) in respect of either the subordination of a loan or a twelve-month moratorium of the loan repayments.

3. APPLICABLE LAW

3.1 Section 61(7) of the Act provides:

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 with an extended time allowed by the Companies Tribunal, **on good cause shown.** [my emphasis]*

3.2 Clause 15.3.1 of the Applicant's Mol states that the Applicant shall hold its AGM once a year, but no later than 6 months after the end of its financial year, which is at the end of February each year.

4. EVALUATION

4.1 As mentioned earlier, Applicant should have held its 2019 AGM by 31 August 2020.

4.2 Section 61(7)(b) of the Act grants this Tribunal the necessary jurisdiction to consider and grant the relief sought by the applicant on “good cause shown”. However, “good cause” is neither defined nor explained in the Act. Therefore, I am guided by the decision of the Constitutional Court, in the *Military Veterans* case, where it was said, “*Good cause may be defined as a substantial or ‘legally sufficient reason’ for a choice made or action taken. Assessing whether there is good cause for a decision is a factual determination dependent upon the particular circumstances of the case at hand.*”¹

4.3 The reasons Applicant proffers in its application are based on unforeseen challenges, which were beyond the purview of its control.

4.4 I take judicial notice of the fact that for the past six months, our country has been in an unprecedented national lockdown to contain the spread of the corona virus. In light of the severe restrictions of movement, it has clearly been impossible for Applicant to timely prepare for and convene its AGM.

5. FINDINGS

5.1 I find that it would be an injustice to deny Applicant a further extension of time within which to hold its AGM.

5.2 Having considered the application, I am satisfied that the Applicant has shown good cause for the extension of the period to convene its AGM.

¹ Minister of Defence and Military Veterans v Motau and Others 2014(5) SA 69 (CC) 89 at par 54.

6. ORDER

6.1 Applicant is granted an administrative order in terms of Section 61(7)(b) of the Act and is granted an extension of the time period within which to hold its 2019 AGM.

6.2 Applicant is required to hold its next AGM on or before 30 November 2020.

ADV. ISHARA BODASING