



IN THE COMPANIES TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA

(“The Tribunal”)

CASE NO: CT00548ADJ2021

In the matter of:

AFRIC OIL (PTY) LTD

(1995/001866/07)

THE APPLICANT

Coram K. Tootla

Decision delivered on 1 February 2021

DECISION

INTRODUCTION:

[1] The Applicant is Afric Oil (Pty) Ltd, a private company (“company”) as defined in Section 1 of the Companies Act, whose registered address is Design Quarter, Leslie Avenue, Gauteng. A.D. Philipus, managing director, of the Applicant Company, makes an application to condone the late filing of the application for extension of time to hold an AGM in terms of the Companies Act 71 of 2008 (“Act”); and for an administrative order to extend the period within which the Company’s annual general meeting (“AGM”) is to be held, which date was extended to 30 November 2020 by the Tribunal.

BACKGROUND:

- [2] The applicant states on form CTR 142 and in the supporting affidavit that the reason for its application for an extension is that it was unable to complete its annual financial statement, and thus unable to hold its AGM for the year ending 29 February 2020 ,by 30 November 2020. It also states why it was unable to hold the AGM and has provided other reasons as to the challenge it is experiencing.
- [3] It is contended that the company cannot complete the Annual Financial Statements (AFS) due to the going concern status which cannot be determined as the loan granted by the U.I.F to the company; and the conclusion of the restructuring of the loan has not been facilitated. The external auditors require a confirmation from the U.I.F that a possible subordination of the loan, alternatively confirmation of a 12 month moratorium on the loan repayment is available, whereafter the external auditors can sign off the AFS and the 2020 AGM can be held. In addition PIC has confirmed that a mortgage and a notarial bond will be passed over the assets of Africa Oil by 9 December 2020. Only thereafter will PIC consider the loan request by Afric Oil and it will be re-tabled.
- [4] The Applicant company has attached the incorrect Memorandum of Incorporation (that of Sacoil which is a public company and a holding company) but contends that it is subject to Section 61 (7) of the Act. Mention is made that the relevant clause of its memorandum is 15.3.1 which does not coincide with MOI attached to the application. The applicant seems to be a private company as per the registration number and name of the company.
- [5] Even though Section 61(7) (b) of the Companies Act 71 of 2008 (the Act) requires a public company to hold its subsequent AGM not more than 15 months from the date of its previous one, it seems the Applicant is stating that it is subject to this section by virtue of its MOI (unattached). The Applicant company requests a condonation of the late filing of its application for extension until 31 April 2021 to hold its AGM.

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- [6] Section 61(7)(b) of the Act allows a public company not in a position to convene its AGM within the prescribed 15 months after the date of its previous AGM to approach this Tribunal for an extension of the time.
- [7] Now the question arises is whether the Tribunal has jurisdiction in the instance of a private company where the MOI speaks of the same time periods as Section 61 (7) but mentions Section 61 (7) and whether the application is to be brought before the Tribunal for the reason that the company is a private company. With regard to the company being a public company, I differ with my fellow learned Tribunal member, Ishara Bodasing in her decision of 30 September 2020 (**Case No: CT00459ADJ2021**), as the company is a private company as set out above
- [8] For a private company, the Applicant is by virtue of Section 61 (1) entitled to call an AGM but in its application it alludes to Section 61 (7). I will exercise my discretion to entertain the application due to the existence of Section 61 (1) which states that a board of a company or any other person specified in the Memorandum of Incorporation (MOI) may call an AGM; and I shall consider whether the Applicant has shown good cause.
- [9] Section 61(1) clearly states that a shareholders meeting may be called at any time that the Board in terms of Section 61 (2) (subject to Section 60) is required by the Act or the MOI to refer a matter to shareholders for decision. However, and in addition it can be seen that the AGM can be called as per the MOI. This is therefore applicable to a profit company such as the Applicant in respect of a compulsory annual general meeting mentioned in the MOI and by implication in respect of the jurisdiction of the Tribunal to grant an extension.

[10] It is to be noted that the Tribunal can exercise its discretion only “on good cause shown”. In *Cohen Brothers v Samuels* 1906 TS 221 at 224 Innes CJ, dealing with an application for extension of time within which to appeal based on a Rule of Court providing that such leave could be granted on good cause shown, stated: “Mr. *Tindall* says the Court has never defined a good cause. In the nature of things it is hardly possible, and certainly undesirable, for the Court to attempt to do so. No general rule which the wit of man could devise would be likely to cover all the varying circumstances which may arise in applications of this nature. We can only deal with each application on its merits and decide in each case whether good cause has been shown.”

[11] However, “good cause” is neither defined nor explained in the Act. In the decision of the Minister of Defence and Military Veterans v Motau and Others (2014(5) SA 69 (CC) 89 at par 54), the Constitutional Court, stated “*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.*”

[12] Having considered the application, based on the aforementioned reasons, I am satisfied that the Applicant has shown good cause for the extension of the period to convene its AGM due to its circumstance and for the reasons enlisted above.

ORDER:

[13] Having considered the application, based on the aforementioned reasons, I grant the Applicant condonation re the late filing of its application and I am satisfied that the Applicant has shown good cause for the extension of the period to convene its AGM by not later than 31 May 2021.

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Khatija Tootla

Member of the Companies Tribunal

1 February 2021