



## IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Case No: CT00559ADJ2021

In the *ex parte* application of:

**DENEL (SOC) LIMITED**

**(Registration number 1992/001337/30)**

**Applicant**

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Presiding Member of the Companies Tribunal: ISHARA BODASING

Date of Decision: 1 February 2021

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**DECISION** (Reasons and an Order)

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### 1. INTRODUCTION

1. Applicant is **DENEL (SOC) LIMITED**, a state-owned company incorporated in terms of the company laws of South Africa, with registration number: 1992/001337/30, and with its registered address at Nellmapius Avenue, Irene, Gauteng.

1.1 Applicant's Acting Chief Executive Officer, Talib Sadik, duly authorised, deposed to an affidavit in support of this application.

1.2 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 2019/20 annual general meeting (AGM) to a date that is no later than 30 March 2021.

## 2. ISSUES

2.1 Clause 12 of Applicant's Memorandum of Incorporation (Mol) requires it to hold an AGM at least once a year but not less than fifteen (15) months after the date of its previous AGM.

2.2 The previous AGM was held on 29 September 2019, which means that Applicant would have had to convene its AGM by 29 December 2020.

2.3 Applicant states that the reason for its request is that the Auditor-General of South Africa ("AGSA") has not finalised its audit, hence the annual financial statements are not ready.

## 3. APPLICABLE LAW

3.1 Section 9 of the Act is entitled **Modified application with respect to state-owned companies**, and states:

*(1) Subject to section 5(4) and (5), any provision of this Act that applies to a public company applies also to a state-owned company, except to the extent that the Minister has granted an exemption in terms of subsection (3).*

3.2 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]*

3.3 Section 61(8) of the Act states that:

*A meeting convened in terms of subsection (7) must, at a minimum, provide for the following business to be transacted –*

*(a) Presentation of –*

*(i) The directors report;*

*(ii) Audited financial statements for the immediately preceding financial year; and*

*(iii) An audit committee report.*

#### **4. EVALUATION**

4.1 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.*”<sup>1</sup>

4.2 Although Applicant has not expanded on why AGSA was unable to complete the audit, the reason Applicant proffers in its application is based on a hurdle, which seems beyond the purview of its control.

4.3 I am mindful that section 61(8) of the Companies Act requires the AFS for the immediately preceding financial year, and the audit committee's report to be presented and form part of the business that would be transacted at the AGM.

#### **5. FINDINGS**

Having considered the application, I am persuaded that the Applicant should be granted an extension of the period to convene its AGM.

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<sup>1</sup> 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 2019/20 AGM.

6.2 Applicant is required to hold its next AGM on or before 30 March 2021.

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**ADV. ISHARA BODASING**