



## IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

Case No: CT00661ADJ2021

In the *ex parte* application of:

**SAA TECHNICAL SOC LIMITED**

**Applicant**

**(Registration number: 1999/024058/30)**

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Presiding Member of the Companies Tribunal: ISHARA BODASING

Date of Decision: 26 April 2021

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### **DECISION** (Reasons and Order)

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#### **1. INTRODUCTION**

1.1 Applicant is SAA Technical SOC Ltd, a state-owned company incorporated in terms of the company laws of South Africa, with its registered address at SAA Technical Head Office, Airways Park, 1 Jones Road, OR Tambo International Airport, Kempton Park, Gauteng, 1627.

1.2 Applicant is a wholly owned subsidiary of South African Airways (SAA) SOC Ltd and its main business is the maintenance, repair and overhaul events of aircraft.

1.3 In March 2021, Applicant's Acting Chief Financial Officer, Wellington Nkosikhona Nyuswa, duly authorised, deposed to an affidavit in support of this application, which is made 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 annual general meeting (AGM) for the year ending 31 March 2018, to a date that is no later than 30 September 2021.

1.4 Applicant was previously granted an extension by this Tribunal until 30 October 2020 to hold its AGM.<sup>1</sup> Applicant is bringing this application six months later, for which a condonation is requested.

## 2. ISSUES

2.1 Applicant describes manifold reasons for the condonation request, including the covid-19 pandemic with its subsequent lockdown and the effect thereof on the aviation industry.

2.2 The main reason advanced for request another AGM extension is that it still awaits the finalization of the annual financial statements pending the resolution of its going concern status. It is again stated that the business rescue process for SAA and its subsidiaries has not yet been concluded.

## 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 Section 9 (1) of the Act provides:

*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).*

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<sup>1</sup> *Ex parte:* SAA Technical Soc Ltd (CT0361ADJ2020)

3.3 Clause 12.1.1 of the Applicant's Memorandum of Incorporation states that the Applicant shall hold its AGM once a year, but no later than 15 months after the date of the previous AGM, or within an extended time allowed by the Companies Tribunal on good cause shown.

#### 4. EVALUATION

##### **Late filing of the Application**

4.1 At the outset, I deal with the question of Applicant's late filing of this application. One of Applicant's reasons (the lockdown) why it did not timely lodge this application is flimsy, to say the least, since this we were in a more relaxed lockdown from August 2020. Applicant must have known well before this that it could not convene its AGM.

4.2 If an application in terms of Section 61(7) of the Act is to be more than an empty ritual, it must demand that this be done timely so that this Tribunal is afforded the scope to perform its purpose. This Tribunal is not to be used as a rubber stamp. In this regard, I echo the sentiments of my brother panellist, K. Manamela:

*"One gets an impression that this manner of doing things is normal with SAA, unless it is conduct reserved by SAA and its associates exclusively for this Tribunal. I have had similar concerns in another application to do with an associate company of SAA. Perhaps, these applications are considered routine and therefore the relief sought being there for the asking. It shouldn't be. Even if an AGM for purposes of SAA would affect a single shareholder, SAA has other stakeholders who may have a direct or indirect interest in the business of its AGM."*<sup>2</sup>

4.3 Applicant has also cited in the Form CTR 147 that there was an oversight due to extraordinary circumstances. These circumstances have been there since early 2020 and can not be an excuse for an official not complying, especially as regards the temporal requirements of the Act.

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<sup>2</sup> *Ex parte*: SAA SOC Ltd (CT00601ADJ/2021 at para. 6

4.4 The principles relating to condonation have become settled in our law. The degree of non-compliance, the explanation thereof, the importance of the case and the avoidance of unnecessary delay in the administration of justice are among the factors that usually weigh with a court when it considers an application for condonation.<sup>3</sup>

4.5 I am mindful of the fact that not only the explanation for the delay, but also the prospects of success in the main action, are important factors in determining whether condonation should be granted in a case. If strong merits or prospects of success are shown, it may mitigate the fault of the applicant in applications for condonation.<sup>4</sup> A court may then exercise its discretion in favour of the applicant, despite a poor explanation for the delay.

### **Good cause**

4.6 I now turn to the issue of whether or not the Applicant has shown good cause to bring this application for an extension of time within which to hold its AGM.

4.7 Applicant held its last AGM on 12 April 2018 and its next AGM should have been held on or before 12 July 2019. This Tribunal has already thrice granted Applicant an extension to hold its AGM, effectively resulting in four (4) outstanding AGM's currently!

4.8 Section 61(7)(b) 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*

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<sup>3</sup> Dengetenge Holdings (Pty) Ltd v Southern Sphere Mining and Development Company Limited (2013) 2 All SA 251 (SCA) at para. 11

<sup>4</sup> Madinda v Minister of Safety and Security 2008 (4) SA 312 (SCA) at para. 317

*the case at hand.*"<sup>5</sup>

4.9 Furthermore, in the unreported decision of The Highly Nutritious Food Company case,<sup>6</sup> Twala, J. evaluated what is "good cause":

*Section 160(2)(b) allows any person and at any time to bring an application on good cause shown. This does not refer only to the delay in bringing the application but to show good cause as to why the application must be entertained. The section requires the applicant to furnish a reasonable explanation as to why the application should be entertained by the Tribunal. It does not require an explanation only as to the delay in bringing the application but refer to the merit of the application as well.*<sup>7</sup>

4.10 Therefore, to succeed on the "good cause" leg of an application such as this, Applicant had to advance a sufficient, substantial or reasonable explanation for the delay in convening an AGM, **and** grounds that warrant the Tribunal granting such an extension.

4.11 Based on the above, for the Applicant *in casu* to successfully show or establish "good cause", it must furnish a substantial or "legally sufficient reason" for the extension sought. In other words, the Applicant must furnish sufficient or substantial reasons in law why it still would not be able to convene its AGM.

4.12 Even though Applicant has already been granted an extension in respect of when to hold its 2019 AGM, the main reasons previously proffered in its application for an extension persist.

## **5. FINDINGS**

I am satisfied that SAA's on-going business rescue proceedings constitutes good cause to grant an extension of the period for holding Applicant's AGM. Hopefully this ensures that Applicant does not return to this Tribunal seeking another extension. If

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<sup>5</sup> Minister of Defence and Military Veterans v Motau and Others 2014(5) SA 69 (CC) 89 at para. 54.

<sup>6</sup> Highly Nutritious Food Company (Pty) Ltd. v Companies Tribunal and Others, High Court, Gauteng Local Division, Case nr. 91718/2016 at para. 12.

<sup>7</sup> See Highly Nutritious Food at para. 18

not, Applicant's officials are requested to demonstrate accountable, efficient and effective administration by approaching this Tribunal for an extension well in advance.

## **6. ORDER**

6.1 Applicant is granted an administrative order in terms of Section 61(7)(b), read with Section 9(1) of the Act and is granted an extension of the time period within which to hold its AGM for the year ending 31 March 2018.

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

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**ADV. ISHARA BODASING**