



**IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA**

**Case No: CT00806ADJ2021**

**In the matter between:**

**YWBN NPC  
(Reg. Nr. 2019/305810/08) 1<sup>ST</sup> APPLICANT**

**YWBN NPO  
(Reg Nr. 232-312 NPO) 2<sup>ND</sup> APPLICANT**

**YWBN CFI  
(Reg. Nr. 2015/014461/24) 3<sup>RD</sup> APPLICANT**

**YWBN CO-OP LTD  
(Reg. Nr. 2015/000550/24) 4<sup>TH</sup> APPLICANT**

**and**

**COMPANIES AND INTELLECTUAL PROPERTY  
COMMISSION RESPONDENT**

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Presiding Member of the Companies Tribunal: ISHARA BODASING

Date of Decision: 13 September 2021

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**DECISION** (Reasons and Order)

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## **1. INTRODUCTION**

- 1.1. Applicants are various entities under the banner Young Women in Business Network (YWBN), all duly incorporated in accordance with the company laws of South Africa, and having their registered address at 22 Voortrekker Avenue, Edenvale, 1609, Gauteng.
- 1.2. Respondent is the Companies and Intellectual Property Commission (“CIPC”), a juristic person established in terms of section 185(1) of the Companies Act 71 of 2008 (“the Act”).
- 1.3. On 29 August 2021 Applicant applied to the Companies Tribunal (CT) in terms of s172 of the Act for an order to review and set aside the Inspectors Report and Compliance Directive of Respondent dated 30 July 2021 (“the decision”). In the alternative, Applicant requested that the compliance directive be modified in part or in whole by extending the period by twenty-one (21) days within which to comply with the directives.
- 1.4. The application was served on the Respondent and lodged after the expiry of the period for appeal as allowed in terms of the Act, for which Applicant has requested a condonation.
- 1.5. The affidavits were deposed to by Nthabeleng Likotsi, a Director of the Applicants, and duly authorised thereto.

## **2. BACKGROUND**

- 2.1. On 15 June 2021 Respondent’s Corporate Compliance Disclosure Regulation Unit was alerted to an unregistered prospectus (YWBN Own the Bank Share Scheme), which was used to raise funds to register a Mutual Bank for historically disadvantage individuals and groupings. The Applicants were all linked to the prospectus.

- 2.2. On 7 July 2021 Applicants' representative met with Respondent's officials and officials from the South African Reserve Bank: Prudent Authority, whereat the investigation's scope was limited to Chapter 4 of the Act and certain sections of the Co-operatives Act 14/2005. The Applicants' audited financial statements for specified years was also requested.
- 2.3. On 21 July 2021 Respondent held a follow-up meeting with Applicants to clarify its request for additional information and the inferences drawn in respect of documents submitted by Applicants.
- 2.4. Respondent's report makes adverse findings against Applicants for, *inter alia* non-compliance with various sections of the Co-operatives Act and contravening section 99 of the Act. A compliance directive was issued for Applicants to, within twenty (20) days thereof:
- a. Reverse any share transaction issued between 1 – 30 June 2021 and repay all the investors who took up shares based on the circulated prospectus;
  - b. Create an Indivisible Reserve;
  - c. Capitalise membership fees; and
  - d. Comply with section 29(b) going forward.
- 2.5. Applicants' representative tried in vain to address their concerns with Respondent's directives, and to seek guidance in respect of compliance. Respondent advised Applicant to secure professional legal, auditing and accounting advice.

### **3. Issues**

The first issue to be decided is whether or not Applicants' late filing of the application to review Respondent's compliance notice and directives can be condoned. If this is answered in the positive, the next issue is a determination of whether or not Respondent's compliance directives were warranted.

## 4. **Applicable law**

### 4.1 Section 171 of the Act states:

“(1) Subject to subsection (3), the Commission ... may issue a compliance notice in the prescribed form to any person whom the Commission ... as the case may be, on reasonable grounds believes –

- (a) has contravened this Act; or
- (b) assented to, was implicated in, or directly or indirectly benefited from, a contravention of this Act,

unless the alleged contravention could otherwise be addressed in terms of this Act by an application to a court or to the Companies Tribunal.

(2) A compliance notice may require the person to whom it is addressed to-

- (a) cease, correct or reverse any action in contravention of this Act;
- (b) take any action required by this Act;
- (c) restore assets or their value to a company or any other person;
- (d) provide a community service, in the case of a notice issued by the Commission; or
- (e) take any other steps reasonably related to the contravention and designed to rectify its effect.

(3) When issuing a notice in terms of subsection (1) to a regulated person or entity, the Commission ... must send a copy of the notice to the regulatory authority that granted a licence or similar authority to that regulated person or entity, and in terms of which that person is authorised to conduct business.

(4) A compliance notice contemplated in subsection (1) must set out –

- (a) the person or association to whom the notice applies;
- (b) the provision of this Act that has been contravened;
- (c) details of the nature and extent of the non-compliance;
- (d) any steps that are required to be taken and the period within which those steps must be taken; and
- (e) any penalty that may be imposed in terms of this Act if those steps are not taken.

(5) A compliance notice issued in terms of this section, or any part of it, remains in force until-

- (a) it is set aside by-

(i) the Companies Tribunal, or a court upon a review of the notice, in the case of a notice issued by the Commission ...; or

(b) the Commission ... as the case may be, issues a compliance certificate contemplated in subsection (6).

(6) If the requirements of a compliance notice issued in terms of subsection (1) have been satisfied, the Commission ... as the case may be, must issue a compliance certificate.

(7) If a person to whom a compliance notice has been issued fails to comply with the notice, the Commission ... as the case may be, may either –  
(a) apply to a court for the imposition of an administrative fine; or  
(b) refer the matter to the National Prosecuting Authority for prosecution as an offence in terms of section 214(3), but may not do both in respect of any particular compliance notice.”

4.2 Section 99 of the Act is titled **General restrictions on offers to public**. It places restrictions on offers to the public of the securities of a company and also prescribes certain requirements (most notably the issue of a prospectus) in this regard. The section draws distinctions between the primary and secondary markets, as well as listed and unlisted securities.

4.3 Section 100 of the Act: sets out requirements concerning a prospectus.

4.4 Part C of Companies Regulations<sup>1</sup>: describes Items required to be included in a Prospectus

4.5 Section 172 of the Act states:

“(1) Any person issued with a compliance notice in terms of this Act may apply to the Companies Tribunal in the case of a notice issued by the Commission ... to review the notice within –

(a) 15 business days after receiving that notice; or

(b) such longer period as may be allowed on good cause shown.

(2) After considering any representations by the applicant and any other

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<sup>1</sup> GN R351 in GG 34239 of 26 April 2011.

relevant information, the Companies Tribunal... may confirm, modify or cancel all or part of a compliance notice.

(3) If the Companies Tribunal ... confirms or modifies all or part of a notice, the applicant must comply with that notice as confirmed or modified, within the time period specified in it, subject to subsection (4).

(4) A decision by the Companies Tribunal ... in terms of this section is binding, subject to any right of review by or appeal to a court.”

## **5. Evaluation**

- 5.1 At the outset I deal with the late filing of this application. 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>2</sup>
- 5.2 Applicant has clearly tried to engage further with Respondent, and requested an extension of time within which to comply. It appears from the papers that Applicant’s reasons for the delay of a few days, are cogent. I am satisfied that the late filing of this application can be condoned, and I turn to deal with the merits of this application.
- 5.3 Applicants contends that Respondent approached the investigation in a malicious and vexatious manner, and flouted the principles of natural justice by not affording them a full audience. This is not a submission that is evident when one peruses the correspondence between the parties.
- 5.4 A study of the Inspectors’ Report from Respondent reveals concerns that can only be addressed through the compliance notice and accompanying directives. Applicants’ affidavit in response to the issues is inadequate in that it only

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

addresses some of the issues such as the audited financial statements, and then too, with little or no supporting evidence.

5.5 Applicants have not dealt with the issues around section 99 of the Act and Part C of the Regulations.

## **6. Finding**

Against the background of what is stated above I find the compliance directive can be modified by extending the period within which Applicant must comply with the Directives.

## **7. Order**

7.1 The application for review of Respondent's decision is upheld;

7.2 Respondent's decision is modified allowing Applicants twenty-one (21) days, from the date of receipt of this order, to comply with Respondent's compliance directives; and

7.3 The Registrar of CT is requested to bring this order and the reasons therefor to the attention of Respondent.

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**ADV. ISHARA BODASING**