



## IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

**CASE NO: CT00941ADJ2022**

Ex Parte Application

SOUTH AFRICAN POST OFFICE SOC LIMITED  
(Registration number 1991/005477/30)

**APPLICANT**

Presiding Member: Dr. M A Chicktay  
Date of Decision: 5th March 2022

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### **DECISION**

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#### **INTRODUCTION**

[1] The Applicant is SOUTH AFRICAN POST OFFICE SOC LIMITED registered in terms of the company laws of the Republic of South Africa, under registration number 1991/005477/30

[2] The Applicant filed an application requesting an extension to hold its AGM on 31<sup>st</sup> March 2022 and to set aside CIPC compliance notice to the extent applicable..

[3] The Application is brought by the Applicant Group Chief Executive Officer. NOMKHITA MONA (ID 7404195194086 ) duly authorized by the Board of Directors to act on behalf of the company.

## **APPLICANT'S SUBMISSIONS**

[4] This is an application, for an administrative order to extend the date for the Applicant to prepare its annual financial statements and to hold its annual general meeting ("AGM") for the financial year ending 31 March 2021 (FY 2020/2021) to a date no later than 31 March 2022.

[5] A compliance notice was received by the Applicant from the Companies and Intellectual Property Commission ("CIPC") on or about 7 December 2021 ("the Notice"), The Notice required the Applicant, within 40 business days of the Notice, to:

- a. conclude and pronounce on the result of the solvency and liquidity test
- b. outline measures that the Applicant will take to remedy the solvency status;
- c. prepare all outstanding annual financial statements on the basis required by section 30 of the Companies Act for the financial year ending 31 March 2021;
- d. submit to CIPC copies of the annual financial statements signed by the registered auditor and approved by the Board of the Applicant;
- e. provide reasons to CIPC why the financial statements for the financial year ending 31 March 2021 were not timeously prepared by the Board.

- [6] In the circumstances, the Applicant requests an extension of the date to respond to the insolvency issue to a date no later than 31 March 2022. It is also requesting an extension to hold its AGM on 31<sup>st</sup> March 2022
- [7] The Applicant indicated that he ACM documents (the directors' report, the audited financial statements for the immediately preceding financial year ("audited AFS"), and an audit committee report) had NOT been finalised and were only expected to be finalised for an ACM to be scheduled shortly before or on 31 March 2022.
- [8] The Applicant argued that there was a delay due to a number of reasons. The complexities involved in the separation between the Applicant and Post Bank and the subsequent complicated impact of this separation on the Applicant's financial situation. This had impaired the process of finalising financial reporting.
- [9] The Covid-19 pandemic also had unforeseen consequences on the trading and liquidity position of the Applicant, with the adverse effects thereof still being experienced. The audit for the 2019/2020 financial year was impacted by these issues and only completed in February 2021, with the ACM being held on 31 March 2021.
- [10] The Applicant indicated that it submitted its unaudited AFS for FY 2020/2021 to the AG on 31 May 2021. The AG was required to audit the AFS within two months of submission of the unaudited AFS to its offices, i.e. by 31 July 2021. The AG, however, was delayed and only completed the audit in November 2021'
- [11] The Applicant argued that the finalization of the AGM documents has thus been delayed

## **APPLICABLE LAW**

### The Law on extension of AGM

Section 61 of the Companies Act 71 of 2008 provides for shareholders meetings.

Section 61(7) specifically provides as follows:

“A public company must convene an annual general meeting of its shareholders-

- (a) Initially, no more than 18 months after the companies date of incorporation; and
- (b) Thereafter, once every calendar year, but no more than 15 months after the date of the previous annual general meeting, or within an extended time allowed by the Companies Tribunal, on good cause shown,”

### The Law on Compliance notice

Section 172 of the Act states:

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 —15 business days after receiving that notice; or such longer period as may be allowed on good cause shown.

After considering any representations by the Applicant and any other relevant information, the Companies Tribunal... may confirm, modify or cancel all or part of a compliance notice. 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).

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."

## **EVALUATION**

[12] The Tribunal is satisfied that good cause has been shown as to why the AGM could not be held within the statutory period required by the Act. Since there was a delay in its financial statements by the auditor general and by the separation between the Applicant and the bank

[13] The Applicant is given the extension to hold the AGM by no later than 30<sup>th</sup> March 2022 and the compliance notice issued by CIPC is extended to 31<sup>st</sup> March 2022.

## **ORDER**

[14]

- a. The Applicant is granted an extension to hold its AGM on or before 31<sup>st</sup> March 2022.
- b. The application for review of CIPC's decision is upheld; CIPC's decision is modified allowing the Applicants until 31<sup>st</sup> March 2022 to comply with CIPC's compliance directives; and
- c. The Registrar of the Companies Tribunal is requested to bring this order and the reasons therefor to the attention of the Applicant and CIPC.

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**Dr. MOHAMED ALLI CHICKTAY**  
**MEMBER OF THE COMPANIES TRIBUNAL**