



**IN THE COMPANIES TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA**

**CASE NO: CT101115ADJ2022**

In the matter between

**THE DAILY GRIND INNOVATION HUB NPC**

Registration number: 2019/628565/08

Applicant

And

**COMPANIES AND INTELLECTUAL PROPERTIES**

**COMMISSION**

Respondent

---

Presiding Member of the Companies Tribunal: HLALELENI KATHLEEN DLEPU

Date of Decision: 14 April 2023

---

**DECISION**

---

## 1. INTRODUCTION

- 1.1 The Applicant is **The Daily Grind Innovation Hub**, a non-profit company (NPC) registered in accordance with the company laws of the Republic of South Africa herein represented by the Centre Manager of the Incorporators and **Dominique Adonis** residing at **Peerless Park, Kraaifontein, Western Cape Province**.
- 1.2 The 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). The Respondent is cited in its official capacity as the entity responsible for the function of the CIPC in terms of the Companies Act. The Respondent's business address is the **DTI Campus Block F, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng, 0002**.

## 2. BACKGROUND

- 2.1 On the 14<sup>th</sup> of July 2022, Compliance Notice was issued by the CIPC against the Applicant for failure to comply with the requirements of section 71 of the Companies Act 71 of 2008 (as amended), when the incorporator of the Applicant Ms Adonis removed the Board.
- 2.2 The Respondent issued a Compliance Notice indicating the following:-
- 2.2.1 That the Applicant as represented by Ms. Adonis to:
- (i) reinstate the Board that was dissolved on the 03<sup>rd</sup> of May 2021.
  - (ii) Submit to the CIPC **proof** that the Board was dissolved on the 03<sup>rd</sup> of May 2021 has been restored.

- (iii) Submit to the CIPC **proof** that an application form CoR 39 has been filed with the Commission within ten (10) business days to update the Applicant's (TDGIH) register of Directors.

The above was required to be complied with by the Applicant within twenty (20) business days from the date of the notice.

2.3 The Compliance Notice further stated that failure to comply with the notice may result in any of the following consequences:

- (a) Prosecution in terms of section 214 (3) of the offence of failing to satisfy a Compliance Notice, the maximum penalty for which is a fine or twelve (12) months imprisonment; or
- (b) imposition of an administrative fine, in terms of section 71(7)(a) of the Act.

2.4 The Compliance Notice further states that if the notice requires the company to file overdue annual returns, failure to comply may result in the deregistration of the company, in terms of section 80 to 82.

*“Any person who is repeatedly guilty of an offence in terms of the Act, including the offence of failure to satisfy a compliance notice, may be placed on probation as a Director, or declared a delinquent Director, and disqualified from serving as a Director, in terms of section 162.”*

3. **SUMMARY OF THE ISSUES THAT GAVE RISE TO THE COMPLIANCE NOTICE**

3.1 The Respondent received a formal complaint in terms of section 168(i)(b) of the Act that:

3.1.1 On the 03<sup>rd</sup> of May 2021, Ms. Dominique Adonis who is the incorporator of the Applicant (TDGIH) and who also served as the Centre Manager (Chief Executive Officer) of the company convened a meeting without an agenda and dissolved the Board of the Applicant, without following due process.

3.2 The Respondent commissioned an investigation in terms of section 169(i)(c) to investigate the allegations made by the complainants who were the members of the Board that was dissolved.

3.3 The Respondent addressed a letter to the Applicant represented by Ms. Adonis informing her of the complaint, and that an investigation has been commissioned in terms of section 169(i)(c). The letter intended to give the Applicant an opportunity to familiarise herself with the allegations and present her side of the story.

3.4 The Respondent's investigator concluded that Ms. Adonis representing the Applicant failed to comply with the requirement of section 71 of the Act. In terms of section 71(1) of the Act, a Director may be removed by an ordinary resolution adopted at a shareholders meeting by persons entitled to exercise voting rights in the election of that Director, subject to subsection (2).

3.5 Section 71(2) stipulates that a Director that is a subject of the removal must be served with a notice of the meeting. The notice must include a resolution stating clearly that the meeting intends to remove that Director and such notice must be

issued fifteen (15) days before the meeting takes place. In terms of section 71(2)(b), the Director concerned must be afforded the opportunity to make representations to the meeting before the resolution is put to a vote.

#### **4. EVALUATION**

- 4.1 Upon receipt of the Compliance Order, the Applicant represented by Ms. Adonis filed a Review Application on the 03<sup>rd</sup> of August 2022. The application for relief was made on form CTR 142 and an affidavit was attached setting out the facts which the Applicant relies on.
- 4.2 In the affidavit, the deponent Ms. Dominique Adonis, alleges that she is a Managing Director and founder of the Daily Grind Innovation Hub and was authorized by a Board resolution dated the 04<sup>th</sup> August 2022. Paragraph 4 of her affidavit dated the 03<sup>rd</sup> August 2022 confirms that she was served with the Compliance Notice which was annexed as “**A**”.
- 4.3 It must be noted that in her affidavit, Ms. Adonis does not go into the merits of the matter but instead goes into detail to attack the Respondent’s interpretation of section 71(1) and section 71(2) of the Companies Act.
- 4.4 I do not intend to repeat the contents of the affidavit and her views on the interpretation of section 71(1) and 71(2).
- 4.5 In paragraph 9(i)(ii)(iii) of the Applicant’s affidavit she reiterates the provisions of section 71(i)(2), section 71(i) and the underlined word **may** and according to the

wording of this paragraph she emphasizes that the word may means that the company can elect to comply with the Act.

4.6 She further goes on to state that in paragraph 9(iv) the provisions of section 71(i) are **discretionary** and **not compulsory** and the rest of the paragraphs in her affidavit details her interpretation of the Act, especially section 71 but does not deal at all with the merits.

4.7 Furthermore, paragraph 9(vi) of the Applicant's affidavit seems to contradict paragraph 9(vi) in that the Applicant submits that even though section 71(1) is discretionary, section 71(2) of the Act is compulsory in that the Director must be notified and must be given a reasonable opportunity to make presentations.

4.8 I had indicated earlier that the Applicant's affidavit does not deal with the merits, but it has an attempt to interpret section 71(i)(2) of the Companies Act. However, her interpretation is done in isolation, and nothing is said about the issue that gave rise to the Compliance Notice in that her interpretation is wholly:

- (i) alluding to the literal interpretation rule and fails to recognize that the literal rule interpretation can sometimes lead to absurdities and loopholes which can be exploited by an unmeritorious litigant.

4.9 In paragraph 9(ix) of the affidavit, the Applicant alleges that the Board of Directors was appointed in terms of the Memorandum of Incorporation. The Applicant did not attach a copy of the Memorandum of Incorporation to her affidavit and accordingly the allegations cannot be proved or relied on.

- 4.10 What is of concern is the allegations of the Applicant in paragraph 9(viii) where she seems to imply that the Directors were removed by the shareholders making use of the company's Memorandum of Incorporation or its agreement/contract it has with such a Director, the provisions of such Memorandum of Incorporation or agreement shall apply, and neither the Director, nor the Commissioner can or may compel the shareholders to comply with the provisions of section 71(2).
- 4.11 There is nothing in the Applicant's affidavit to indicate that the company which was established in terms of the Companies Act as a non-profit company had members. She continuously, interchangeably uses the scenario in terms of section 71(1) and 71(2) and refers to the removal of Directors by shareholders, nowhere does she refer to the company as a non-profit company with or without members. had shareholders. She continuously tries to put her own understanding and limited interpretation of section 77 (1) and (2) of the Companies' Act. It is clear that the arguments she is advances are meant to advance a narrative that suits her conduct and seeks to justify why the directors were removed in contravention of section 71(1) and (2).
- 4.12 The investigator's report has provided me with detailed picture of the applicants' company and the issues to that led to the Compliance notice being issued against the applicant.

The Daily Grind Innovation Hub was established in terms of the Companies Act as a non-profit company without members. The report indicates that a standard Memorandum of Incorporation was registered in 2019.

- 4.13 The Investigator's report indicates that when the company was incorporated it had 3 directors namely, Ms. Adonis, Ms. Swart and Adv. Hartzenburg. Ms. Adonis became the Managing Director and the two remained as non-executive Directors. Ms Adonis was also elected as the Centre Manager in charge of the day to day running of the company.
- 4.14 The company had a sole funder, the Small Enterprise Development Agency (SEDA) and a Memorandum of Agreement between the funder and the company stipulated that the company must set up a Board of Directors.
- 4.15 According to the report, Adv. Hartzenburg who was the Chairperson of the Board resigned, however the resignation was not reflected on the Commissions' records. It was not clear whether Adv. Hartzburg was ultimately removed as a Director of the Applicant.
- 4.16 Sometime in September 2020, the company was advertised to fill in the Directorship vacancies and five new non -executive Directors were appointed on the 24<sup>th</sup> of December 2020.
- 4.17 The new Board members namely Mrs. Ndamase, Mr. Naidoo, Dr. Vella, Ms. Ngqulana – Kasana and Mr. Goliath applied and were appointed as new Directors. They accepted the appointment and were inaugurated in a meeting held on the 14<sup>th</sup> December 2020 in the presence of the SEDA for all intents and purposes the five new Directors status as appointed Directors was confirmed in this meeting.
- 4.18 The newly appointed Directors resumed their duties and according to the investigators' report the newly appointed Board Chairperson, namely Dr. Vella



raised a concern during the due diligence exercise about a transaction which involved awarding of a tender which seemed to have benefited a senior executive who managed the partnership between the Applicant and the funder. The matter was raised at a special general meeting of the Board held on the 15<sup>th</sup> of February 2021.

4.19 The matter was discussed, and the Board decided to seek a further clarifying report regarding the matter and requested the Centre Manager submit supplementary information in line with the terms of reference. A report was not forthcoming and as of 24 April 2021 and the Board resolved to a seek legal opinion regarding the matter.

4.20 Before a legal opinion which was sought could be discussed, the Centre Manager convened an urgent Board Meeting which had no agenda on the 03<sup>rd</sup> of May 2021 accused the Chairperson in the meeting and thereafter dissolved the Board without following due process.

4.21 Four of the new Board members received letters of termination of their appointment as Directors only one Director Mr. Goliath was spared. The terminated Board member requested explanation through correspondence sent to the Centre Manager, but no response was forthcoming from the Centre Manager, this is what led to the complaint investigation and subsequent issue of a Compliance Notice.

4.22 None of the contents contained in the Investigation report were disputed by Ms. Adonis she however directed herself to the interpretation of section 71 of the

Companies Act and challenged the interpretation of the Commissions 'Investigator.

## **5. THE APPLICABLE LEGISLATION FRAMEWORK**

### **5.1 The Mandate of the Commission**

5.1.1 Section 187 details the Mandate of the Companies Commission amongst others to enforce the Companies Act *inter alia*:

- (i) Monitoring proper compliance with the Act;
- (ii) Promoting the voluntary resolution of disputes in terms of the Act between a company on the one hand and a shareholder or Director on the other;
- (iii) Receiving complaints concerning alleged contraventions of the Act, initiating investigations into complaints, and ensuring prompt, proper investigations;
- (iv) Issuing and enforcing compliance notice; and
- (v) various other means in the course of complaints made to the Companies Commission.

5.1.2 Section 172 of the Act empowers the Tribunal amongst others to review compliance notices issued by the Companies Commission and to confirm, modify or cancel all or part of the notice.

### **5.1.3 Jurisdiction of the Company Tribunal**

- 5.1.3 (i) The Tribunal has jurisdiction to deal with the current

application. In doing so, one is required to conduct a thorough examination of the papers placed before me in this matter and also requires me to examine provisions of the Act and to a certain extent to look at case law as well.

5.1.3 (ii) To put the matter in context, I was presented with the Applicant's application for relief lodged with the Respondent on Form CTR142. Compliance Notice Form Cor 139.1 attached to it as Annexure "A" a statement to bring the conduct Daily Grind Innovation Hub NPC into compliance with the Companies Act no. 71 of 2008. Although it is of concern to me that the resolution was signed after the affidavit was deposed to. The affidavit was signed on the 03<sup>rd</sup> August 2022 and the resolution was signed on the 04<sup>th</sup> August. I did not think the dates invalidate the affidavit as there was a second affidavit dated the 03<sup>rd</sup> October 2022.

(iii) The inspectors' Report dated the 11 July 2022. The inspector did not raise this as a point in *limine*.

(iv) Affidavit of Ms Adonis dated 3<sup>rd</sup> August 2022 and Board Resolution dated 4<sup>th</sup> August 2022 authorizing Ms Adonis to depose to the Affidavit on behalf of the company.

(v) The unsigned Respondent's Answering Affidavit by Mr Nkululeko Norman, the Senior Investigator of the Respondent.

(vi) The Applicant's Replying Affidavit deposed to by Ms Adonis also dated the 3<sup>rd</sup> October 2022.

5.1.4 The gist of the issues that gave rise to the compliance notice were stated in detail in the Inspector's Report. The Applicant did not provide any supporting document to her affidavit more especially the company information the Directors and Memorandum of Incorporation. I could only conclude that the merits that gave rise to the compliance notice were not in dispute.

5.1.5 I will now direct myself to the applicable legislation to the Applicant's company.

It is common cause that the Applicant's company is a non-profit company that is incorporated for: -

- (i) Public benefit object or;
- (ii) An object relating to one or more cultural or social activities, or communal or group interests and it is in this essence that the income of a non-profit company must not be distributable to its incorporators' members, directors, officers or persons related to any of them subject to certain exceptions permitted by the Act in terms of schedule 1 of the Act.

- 5.1.6 Other characteristics of a non-profit company is that the company must be formed by at least three persons acting in common as incorporators. The non-profit company may be formed with or without members, the members need not necessarily be voting members.
- 5.1.7 Item 3 of schedule 1 provides that the Incorporators of a non-profit company are its first Directors and its members nothing in this application gives clarity on whether the company in question has members if so. A non- profit company is not required to have members unless its Memorandum of Incorporation provides.
- 5.1.8 Item 4(1) of Schedule 1 provides that the term member, when issued in relation to a non-profit company means a member who holds membership in and specified rights in respect of that non-profit company. A non -profit company with members may have voting members which is provided for in the Memorandum of Incorporation.
- 5.1.9 Section 58 to section 65 of the Companies Act (dealing with companies apply to a non-profit company only if it has voting members).
- 5.1.10 Furthermore the Memorandum of Incorporation must not restrict or regulate membership in any manner that amounts to unfair discrimination in terms of section 9 of the Constitution of the Republic of South Africa and in conflict with the Companies Act 71 of 2008.
- 6.1 It must be borne in mind that the purpose of the Companies Act in terms of section 7 is amongst others: -

- (i) to promote compliance with the Bill of Rights as provided for in the Constitution in the application of Company law.
- (ii) to encourage transparency and high standards of Corporate Governance as appropriate given the significant role of enterprises within the social and economic rise of the nation.
- (iii) to provide for the formation, operation, and accountability of non-profit companies in a manner designed to promote, support, and enhance the capacity of such companies to perform their functions to balance the rights and obligations of shareholders and Directors within companies. The list is not exhaustive.

6.2 The Company Act 71 of 2008 in broad terms grants protection and safeguards to certain categories or persons to disclose relating to specified unlawful or irregular conduct on the part of the company or its directors or prescribed officers acting in their capacity as such.

In respect to the removal of Directors in terms of section 71 of the Companies Act of 2008 bearing in mind that section 71(1) and 71(2) does not differentiate between non-profit companies and profit companies. Compliance with the Act is of paramount importance.

6.3 The section is applicable to all types of companies including non-profit companies.

6.4 The question to be asked is whether the Memorandum of Incorporation can override the provisional outlined in the Companies Act with regards to the removal of the appointment of Directors.

6.5 The answer can be found in section 15(1) of the Companies Act which provides that each provision of the Company's memorandum of Incorporation: -

- (a) must not be inconsistent with the Companies Act; and
- (b) is void to the extent that it contravenes or is inconsistent with the Companies Act.

## 7. **THE PROCESS OF THE REMOVAL OF A DIRECTOR IN TERMS OF SECTION 71 OF THE COMPANIES ACT**

(i) This section of the Companies Act states that a director may be removed by an ordinary resolution passed at a shareholders meeting, even if the Memorandum of Incorporation, company rules, or any agreements between the company, shareholders, and directors say otherwise. However, before such resolution can be considered, the director must be given notice of the meeting and the resolution and be given a reasonable opportunity to make a presentation to the meeting before the resolution is put to the vote.

(a) In the recent judgment handed down by the Gauteng Local Division (Johannesburg) of the High Court, in the matter ***Miller v Natmed Defence (Pty) Ltd (18245/2019) [2021] ZAGPJHC 352 (24 August 2012)***, the court

confirm the long-held view that the shareholders of a company are not required to give reasons for their decision to remove a director pursuant to sections 71(1) and 71(2) of the Companies Act.

- (ii) If a company has more than two directors and a director is alleged to be **ineligible, disqualified, incapacitated, or negligent in their duties**, the board, other than the director concerned, must determine the matter by resolution and may remove the director. Importantly before such a resolution can be considered, the director concerned must be given notice of the meeting and a copy of the proposed resolution, as well as an opportunity to make a presentation.
- (iii) If the board determines that a director is ineligible, disqualified, incapacitated, or negligent, the director or the person who appointed them may apply to a court to review the determination within 20 business days. If the board's determination is confirmed, any director who voted against the resolution, or any holder voting rights, may apply to a court to review the determination.
- (iv) If a company has fewer than three directors, a director or shareholder may apply to the Companies Tribunal to make a determination in the circumstances contemplated in this section. Nothing in this section deprives a person removed from office as a director of any right to apply to a court for damages or compensation. This section is in addition to the right to apply to a court for an order declaring a director delinquent or placing a director on probation under section 162 of the Companies Act.



- (v) Therefore, relationship between the provisions of the MOI and the Companies Act in South Africa is complex and depends on the specific provisions in question and the circumstances of each case. It is therefore importation for companies to ensure that their MOI is in compliance with the Companies Act and that any provisions in the MOI are consistent with the requirements of the law and established legal precedent.
- (vi) Nothing in this section gives rise to a company having a discretion to use the Memorandum of Incorporation or provides of the Companies Act as stated by the Applicant.

## **8. EVALUATION**

- 8.1 At the outset, I must point out that the Applicant failed to address in her affidavit including the Replying affidavit any of the material issues that resulted in the issuing of the Compliance Notice, and which forms the basis of this application.
- 8.2 The details in the Applicant's affidavit are based in her purported understanding and interpretation of section 71 of the Act which deals with the removal of Directors under various circumstances.
- 8.3 The provisions of section 71 of the Act must not be read in isolation to the exclusion of the intention of objectives of the Act in interpreting this section or any legislation for that matter.
- 8.4 The Applicant was at pains despite her having obtained legal opinion as she claims have to interpret section 71 literally to suit her narrative that section

71 gives the company a discretion. Her literal interpretation produced an absurdity and contradictions more especially in that she failed to align her interpretation of the section 71 of the Companies Act to the facts including the type of company and the merits that led to the issue of the Compliance Notice.

8.5 It is important for me to reiterate the provisions of section 71 of the Act that are relevant for purposes of my determination of this matter. Section 71 of the Act reads as follows:-

***“(1)” despite anything to the contrary in a company’s Memorandum of incorporation or rules, or any agreement between a company and a director, or between any shareholders and a director, a director may be removed by an ordinary resolution adopted at a shareholders meeting by the persons entitled to exercise voting rights in an election of that director, subject to subsection (2)***

***(2) Before the shareholders of a company may consider a resolution contemplated in subsection (1)-***

***(a) the directors concerned must be given notice of the meeting and the resolution, at least equivalent to that which a shareholder is entitled to receive, irrespective of whether or not the director is a shareholder of the company; and***

***(b) the director must be afforded a reasonable opportunity to make a presentation, in person or through a representative, to the meeting, before the resolution is put to a vote.***

***(3) if a company has more than two directors, and a shareholder or director has alleged that a director of the company-***

- (a) has become-**
- (i) ineligible or disqualified in terms of section 69, other than on the grounds contemplated in section 69(8)(a); or**
- (ii) incapacitated to the extent that the director is unable to perform the functions of a director, and is unlikely to regain that capacity within a reasonable time; or**
- (b) has neglected, or been derelict in the performance of, the functions of director,**
- the board, other than the director concerned, must determine the matter by resolution, and may remove a director whom it has determined to be ineligible or disqualified, incapacitated, or negligent or derelict, as the case may be.**
- (4) before the board of a company may consider a resolution contemplated in subsection (3), the director concerned must be given-**
- (a) notice of the meeting, including a copy of the proposed resolution and a statement setting out reasons for the resolution, with sufficient specificity to reasonably permit the director to prepare and present a response; and**
- (b) a reasonable opportunity to make a presentation, in person through a representative, to the meeting before the resolution is put to a vote.**
- (5) if, in terms of subsection(3), the board of a company has determined that a director is ineligible or disqualified, incapacitated, or has been negligent or derelict, as the case may be, the director concerned, or a person who appointed that director as contemplated in section 66 (4) (a) (i), if**

***applicable, may apply within 20 business days to a court to review the determination of the board.***

***(6) if, in terms of subsection (3), the board of a company has determined that a director is not ineligible or disqualified, incapacitated, or had not been negligent or derelict, as the case may be-***

***(a) any director who voted otherwise on the resolution, or any other of voting rights entitled to be exercised in the election of that director, may apply to a court to review the determination of the board.***

9. Sections 71(1) and (2) of the Act deal with the removal of a director and the procedure to be followed thereof by shareholders of a company. Such removal should be done by means of an ordinary resolution taken by shareholders of a company at a shareholders' meeting. The resolution of the removal of a director can only be taken after a proper notice had been given to the director to be removed and such director having been afforded a reasonable opportunity to make representation in line with the procedure outlined in section 71(2) of the Companies Act.
10. I am satisfied that the Respondent's investigator covered all the relevant facts and applied the provisions of section (1) and (2) appropriately.
11. It is evident that the Applicant mechanically and literally interpreted the provisions of section 71(1) and (2) and did not apply her mind in the question of under what circumstances this section applies including the objectives of the Act. Her interpretation is definitely inconsistent with the objectives of true and fair view.

12. Furthermore, the Applicant in both her affidavits do not deny submissions made by the Respondent and one has to presume that they are admitted.
13. In the light of the above, I find that the Respondent's Compliance Notice was reasonably and procedurally issued fairly and in compliance with the provisions of section 71 of the Act.

9. **ORDER**

I therefore make the following order:-

- 9.1 The Application for review and cancellation of the compliance notice is hereby dismissed.
- 9.2 The Order be served that is, the Applicant within five (5) days of this Order.
- 9.3 That the Applicant comply with the compliance order dated 14<sup>th</sup> July 2022 within fourteen(14) business days from the date of this Order.

---

**HLALELENI KATHLEEN DLEPU**  
**MEMBER OF THE COMPANIES TRIBUNAL**