



IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

CASE NO: CT00240ADJ2019

Ex Parte Application

TONGAAT HULLET LIMITED

APPLICANT

Presiding Member: Dr. M A Chicktay
Date of Decision: 2nd December 2019

DECISION

INTRODUCTION

[1] The Applicant is the Tongaat Hulett Limited (“the Applicant”), registered in terms of the company laws of the Republic of South Africa, under registration number 1892/000610/06.

[2] The Applicant filed an application requesting an extension to hold its AGM on 28th February 2019 which is more than the statutory 15 Months after the last AGM which was held on 8th August 2018.

[3] The Application is brought by the applicants Company secretary Maditshaba Mahlari (ID 7211260345083), duly authorized by the Chief Executives and the Chief Financial Officers of the applicant.

APPLICANT'S SUBMISSIONS

[4] This is the second application by the applicant to extend the date for its AGM. In the first application the applicant requested that the date be extended to 11th December 2019 as the applicant was undergoing a forensic investigation. Senior management had been changed and criminal charges had been laid against former senior executives. Due to these internal constraints the applicant needed more time to finalise their financial statements. The Companies Tribunal through member B Zulu granted the extension to hold its general meeting to 11th December 2019 (CT00204/ADJ/2019)

[5] In the application before me the applicant is requesting a further extension to hold its AGM. The applicant indicates that due to these internal constraints it would only be able to finalise and release its annual financial statement on 9th December 2019 and thus is requesting an extension to hold its AGM on 28 February 2020.

APPLICABLE LAW

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

[7] 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,”

EVALUATION

[8] 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. Even though the Tribunal had granted the applicant an extension to hold its AGM on 11th December 2019 we so no reason to deny a further extension especially in light of the serious internal constraints placed on the applicant. Financial documents subject to forensic investigations may need to be presented at the AGM and the applicant indicated that these financial statements will only be finalized around 9th December 2019 making it too close to the 11th December 2019 extension originally given. Thus, a further extension of the AGM to 28th February 2020 would not be unreasonable.

ORDER

[9] The Applicant is granted an extension to hold its AGM on 28th February 2020.

Dr. MOHAMED ALLI CHICKTAY
MEMBER OF THE COMPANIES TRIBUNAL