



## IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

**Case No: CT00273ADJ2020**

**In the *ex parte* application of:**

**SOUTH AFRICAN AIRWAYS TECHNICAL SOC LIMITED**

**Applicant**

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

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Presiding Member of the Companies Tribunal: ISHARA BODASING

Date of Decision: 10 January 2020

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

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#### **1. INTRODUCTION**

1.1 Applicant is South African Airways 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 SOC Ltd (“SAA”) and its main business is the maintenance, repair and overhaul events of aircraft.

1.3 Applicant's Company Secretary, Ruth Nambi Kibuuka, duly authorised, deposed to an affidavit in support of this application.

## 2. ISSUES

2.1 This is an application 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 2019 annual general meeting (AGM) to a date that is no later than 31 March 2020.

2.2 Applicant states that the reason for this request is that it still awaits the finalization of the annual financial statements pending the resolution of its going concern status. It is further stated in the supporting affidavit that, with effect from 5 December 2019, a Business Rescue Practitioner was appointed for SAA and its subsidiaries.

2.3 This Tribunal granted SAA an extension of time until 30 March 2020 to hold its AGM for the financial year ending 31 March 2019.<sup>1</sup>

## 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* South African Airways (SOC) Ltd (CT012Jun2019)

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

4.1 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 granted Applicant an extension to hold its AGM on or before 30 December 2019.<sup>2</sup> That application was made due to a delay in finalising Applicant's Annual Financial Statements.

4.2 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 the case at hand.*"<sup>3</sup>

4.3 Even though Applicant has already been granted an extension in respect of when to hold its 2019 AGM, the reasons proffered in its current application are based on new and unforeseen challenges. These are: 1) the possibility of being placed under business rescue, and 2) the extension of time granted to SAA to hold its 2019 AGM.

#### 5. FINDINGS

5.1 I find that it would be an anomaly to deny Applicant a further extension of time within which to hold its AGM, when its holding company has already been

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<sup>2</sup> *Ex parte*: SOUTH AFRICAN AIRWAYS TECHNICAL SOC LIMITED (CT014JUN2019)

<sup>3</sup> Minister of Defence and Military Veterans v Motau and Others 2014(5) SA 69 (CC) 89 at par 54.

granted such an extension.

5.2 Having considered the application, I am satisfied that the Applicant has shown good cause for the extension of the period to convene its AGM.

## **6. ORDER**

6.1 The 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 2019 AGM.

6.2 The Applicant is required to hold its next AGM on or before 30 March 2020.

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**ADV. ISHARA BODASING**