

## THE COMPANIES TRIBUNAL OF SOUTH AFRICA

**CASE NO: CT009Jul2015**

In the matter regarding:

**Zhou's Enterprise International Trade (Proprietary) Limited (Registration number: 1999/016588/07)** Applicant

**And**

**African Belting and Conveyors (Proprietary) Limited (Registration number: 2011/141141/07)** First Respondent

**Michael Ian Henningsen (ID: [5.....])** Second Respondent

**Coram: S. Gounden**

**Decision handed down on 17 December 2015**

---

### DECISION

---

#### INTRODUCTION

[1] The Applicant applies in terms of section 61(11) (b) of the Companies Act 71 of 2008 ("Act" / "Companies Act") for an administrative order for convening a shareholders meeting.

#### BACKGROUND

[2] The Applicant is a private company, which has a 51% shareholding in the First Respondent. The sole director of the First Respondent is the Second Respondent, who is also the 49% shareholder of the First Respondent.

- [3] The Applicant filed an application stated above, as prescribed by regulation 142 (1) (a), together with a supporting affidavit as required by regulation 142 (1) (b). Mr. Hon Pan Cheung has signed the affidavit and was duly authorised to act for and on behalf of the Applicant.
- [4] The Applicant made numerous attempts to hold a shareholders meeting and was unsuccessful due to *inter alia* the unavailability of the Second Respondent.

## ISSUES

- [5] A resolution of the Board of the Applicant dated 26 April 2015 authorizing Hon Pan Cheung to act for and on behalf of the Applicant was included in the application.
- [6] The Applicant requests that the Companies Tribunal issues an administrative order for shareholders meeting to be convened.

## APPLICABLE LAW

- [7] The jurisdiction of the Companies Tribunal is stated in section 61 of the Act and is as follows:
- “(11) If a company is unable to convene a meeting as required in terms of this section because it has no directors, or because all of its directors are incapacitated –*
- (a) any other person authorised by the company’s Memorandum of Incorporation may convene the meeting; or*
- (b) if no person has been authorised as contemplated in paragraph (a), the Companies Tribunal, on a request by any shareholder, may issue an administrative order for a shareholders meeting to be convened on a date, and subject to any terms, that the Tribunal considers appropriate in the circumstances.”*

## EVALUATION

- [8] The Applicant has loaned the First Respondent, which at 28 February 2014 amounted to R510 511 and the Applicant has supplied goods to the value of R1 236 128.

- [9] The Applicant requires the financial statements to be presented at a shareholders meeting in order to assess whether the First Respondent has the resources to repay its debts.
- [10] A shareholders meeting was convened by the Applicant on the 19 December 2014 in order to appoint new Directors. However, the Second Respondent did not attend.
- [11] The attorneys of the Second Respondent wrote to the Applicant stating that the Second Respondent is incapacitated due to ill health.

## **FINDINGS**

- [12] The Applicant has shown good cause for the Companies Tribunal to grant its request.

## **ORDER**

- [13] The application for an administrative order for a shareholders meeting to be convened has been granted / allowed, subject to the following terms:
- at a date, time and venue to be agreed by all parties. However, such **shareholders meeting may not be held later than 30 days of the date of this order,**
  - agenda to be agreed on by all parties,
  - due notices must be given to all parties,
  - all documentation for the meeting must be sent with the notice, and
  - all other Companies Act requirements for convening the shareholders meeting must be adhered to

---

**S. Gounden**  
**COMPANIES TRIBUNAL**  
**Pretoria**  
**17 December 2015**