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**IN THE COMPANIES TRIBUNAL OF SOUTH  
AFRICA**

**Case No: CT00883/ADJ2021**

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

**Ascendis Health Limited**

**Applicant**

**(Registration number: 2[...])**

Presiding Member of the Companies Tribunal: ISHARA BODASING

Date of Decision: 13 December 2021

**DECISION** (Reasons and an Order)

**1. INTRODUCTION**

1.1 Applicant is Ascendis Health Limited, a public company incorporated in terms of the company laws of South Africa, with registration number: 2[...], and with its registered address at 3[...] G[...] C[...] East, B[...], Johannesburg Gauteng.

1.2 Applicant's Company Secretary, Mpeo Nkuna, duly authorised, deposed to an affidavit in support of this application.

1.3 This is an application in terms of Section 61(7)(b) of the Companies

Act 71 of 2008 ("the Act"), for an administrative order to extend the date for Applicant to hold its 2020 annual general meeting (AGM) to no later than 01 March 2022.

## **2. ISSUES**

2.1 Paragraph 20.2.1 of Applicant's Memorandum of Incorporation (Mol) requires it to hold an AGM each calendar year but no more than 15 (fifteen) months after the date of the previous AGM. The previous AGM was held on 01 December 2020. Applicant was due to hold its AGM on 20 December 2021.

2.2 . Although Applicant's anticipated date falls within the 15-month period as per the Act, it falls short of compliance with the Mol in that it is not within the calendar year after the previous AGM.

2.3 Applicant states that the reason for its request is manifold, including that:

2.3.1 Shareholders have asked Applicant to extend the proposed date of 20 December 2021 to hold the AGM because it is during the holiday season, and it seems that Applicant may not make a quorum for the proceedings to be valid.

2.3.2 The Directors have received allegations regarding shareholder representation and voting pools, which must be verified in order to comply with requisite disclosures. Applicant requires more time to engage in this regard;

2.3.3 Applicant is also negotiating to dispose certain of its divisions, which is important to reduce its debt and improve its financial position.

## **3. APPLICABLE LAW**

Section 61(7) of the Act provides:

*A public company must convene an annual general meeting of its shareholders –*

*...*

*(b) ... 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]*

#### 4. EVALUATION

4.1 Section 61(7)(b) of the Act 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>1</sup>

4.2 Some of the reasons Applicant proffers in its application are based on unforeseen challenges, which are beyond the purview of its control. In this regard, I refer to the allegations that need to be investigated, and the negotiations.

4.3 Although clause 20.2.3.1 of Applicant’s Mol provides for the AGM to be conducted via electronic communication, it is noteworthy that its shareholders themselves have asked for the meeting to be held after the holiday season.

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<sup>1</sup> Minister of Defence and Military Veterans v Motau and Others 2014(5) SA 69 (CC) 89 at par 54.

## **5. FINDINGS**

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 Applicant is granted an administrative order in terms of Section 61(7)(b) of the Act being an extension of the time period within which to hold its 2020 AGM.

6.2 Applicant is required to hold its next AGM on or before 01 March 2022.

**ADV. ISHARA BODASING**