

IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA, PRETORIA

CASE NO: CT026Nov2016

In the matter between:

Deshalan Naidu

Applicant

And

Sayen Mohanlall

Respondent

Coram: Kganyago M.F

Decision handed down on the 11th January 2017

DECISION

- [1] The applicant has brought an application in terms of section 71(8) of the Companies Act 71 of 2008 (" the Act"). The applicant is seeking an order removing the respondent as a director of Atlantic Frozen Food Distributors (Pty) Ltd.
- [2] The applicant's application was served on the respondent on the 30th November 2016 by email. The respondent did not serve or file any opposing papers. The 20 days within which the respondent is required to serve and file opposing papers if any has lapsed. The applicant is now applying for a default order in terms of regulation 153(1) of the Companies Regulations 2011 ("the Regulations").
- [3] The applicant has initially brought a similar application under case number CT003SEP2016. Under that case number, the order which the applicant was seeking was refused on some technicalities without going into its merits. The applicant has now rectified the technicalities which prevented him from obtaining the order he was seeking under case number CT003SEP2016.

- [4] The basis of the applicant's application, which is deposed in an affidavit is that the respondent was misrepresenting himself to service providers, he was defrauding Atlantic Frozen Food Distributors, he was making irregular withdrawals from the account of Atlantic Frozen Food Distributors without the consent or knowledge of the applicant, and also lending his father money from the account of Atlantic Frozen Food Distributors without the consent or knowledge of the applicant. The respondent was also lying to the applicant about making orders for Atlantic Frozen Food Distributors, whereas no such orders were made. The respondent's actions resulted in Atlantic Frozen Food Distributors suffering a loss which in turn has prejudiced the applicant.
- [5] In terms of section 71(8) of the Act, if a company has fewer than three directors, any affected director may apply to the Tribunal for an order removing another director on the basis contemplated in section 71(3)(b) of the Act.
- [6] In terms of section 71(3)(b) a director may be removed if that director has neglected, or been derelict in the performance of the functions of a director.
- [7] Atlantic Frozen Food Distributors has only two directors, and those directors are the applicant and the respondent. Therefore, in my view the applicant's application qualifies to be entertained in terms of section 71(8) of the Act.
- [8] It is clear from the facts which the applicant is relying upon that the respondent has been in derelict in the performance of his functions as a director. The respondent did not file any opposing papers to rebut the applicant's version , and therefore the version of the applicant remained unchallenged.
- [9] Under the circumstances, I don't have any reason to refuse the applicant with the order he is seeking. I am satisfied that the applicant has made up a good case for the removal of the respondent as a director of Atlantic Frozen Food Distributors (Pty) Ltd.

ORDER

- [10] In the result I make the following order:

10.1. The applicant's default order is granted.

10.2. The respondent Sayen Mohanlall is hereby removed as a director of Atlantic Frozen Food Distributors (Pty) Ltd with effect from the date of this order.

10.3. The Companies Intellectual Property Commission (CIPC) is directed to effect the removal of the respondent as director of Atlantic Frozen Food Distributors reg no 2015/212806/07 within twenty business days of receipt of this order.

M.F KGANYAGO

MEMBER OF THE COMPANIES TRIBUNAL