



**IN THE COMPANIES TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA**

**("THE TRIBUNAL")**

**CASE NUMBER: CT003SEP2016**

**In the matter of:**

**DESHALAN NAIDU**

**APPLICANT**

**and**

**SAYEN MOHANLALL**

**RESPONDENT**

**In respect of:**

**ATLANTIC FROZEN FOOD DISTRIBUTORS (PTY) LTD  
(Registration Number 2015/212806/07)**

**REMOVAL OF DIRECTOR**

**Coram: PJ Veldhuizen**

**Order delivered 25 November 2016**

## ORDER

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### 1. THE APPLICANT

The Applicant is **DESHALAN NAIDU** ("the Applicant"), an adult male businessman, residing at No. [...] F, No [...] T. R., Pelham, Pietermaritzburg, Kwazulu-Natal.

### 2. THE RESPONDENT

The Respondent is **SAYEN MOHANLALL** ("the Respondent") an adult male businessman, residing at No. [...] S., No [...] C. P., Montrose, Pietermaritzburg, Kwazulu-Natal.

### 3. THE COMPANY

The parties are both directors of **ATLANTIC FROZEN FOOD DISTRIBUTORS (PTY) LTD** ("the Company") which maintains its registered office at No 9 St Andrews Street, Central, Kwazulu-Natal.

### 4. THE APPLICATION

4.1. The Applicant refers to the application as a "Removal of Director in terms of Section 71(8) of the Companies Act No. 71 of 2008 ("the Act") through Section 162."

4.2. The Applicant requests a Default Order as envisaged by Regulation 153 of the Act, alleging the Respondent has, having been duly served with the application, failed to file a replying Affidavit, as required by Regulation 143.

### 5. THE LEGISLATION

5.1. The Tribunal enjoys no jurisdiction in terms of Section 162 and therefore this application should only be considered in terms of Section 71(8) but for the reasons set out below, the Tribunal is unable to entertain this matter as currently filed.

5.2. Section 71(8) provides *inter alia* that if a company has fewer than three (3) directors that a director may apply to the Tribunal for an Order removing a director on the basis contemplated in Section 71(3)(b) [presumably the section upon which the Applicant relies] in that such a director:

*“has neglected, or been derelict in the performance of, the functions of director.”*

5.3. While the Applicant may be able to make out a case in a subsequent application regrettably this application does not comply with the Regulations of the Act.

5.4. Regulation 142(b) requires an Applicant to attach:

*“a supporting affidavit setting out the facts on which the application is based.”*

## **6. APPLICATION OF THE LEGISLATION TO THE FACTS**

6.1. The Applicant has filed two affidavits:

6.1.1. An affidavit dated 6 September 2016 which contains no facts whatsoever; and

6.1.2. An affidavit dated 21 October 2016 in support of the Application for a Default Order.

6.1.3. Neither affidavit is initialed by the deponent (Applicant) and the commissioner of oaths on each page, nor are any of the

remainder of the documents filed by the Applicant in support of this application signed by the Applicant or confirmed in any manner on affidavit.

6.1.4. The audio files presented to the Tribunal have not been transcribed and the Applicant has not confirmed the content on affidavit.

6.2. A presiding officer is not entitled to base findings on matters, which are not based on the record of evidence presented.

6.3. While the documents filed by the Applicant may provide the Tribunal with a suspicion as to the conduct of the Respondent, the failure to present the evidence to the Tribunal in the prescribed manner precludes the presiding officer from taking the documents into account when making a determination as to the relief sought.

## **7. FINDING**

The Tribunal is unable to accord any weight to the irregular affidavits and the documents filed in their current form.

## **8. ORDER**

The following Order is made:

The application is refused.



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**PJ VELDHUIZEN**  
**MEMBER OF THE COMPANIES TRIBUNAL**  
**CAPE TOWN**