



**COMPANIES TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

CASE NO: CT16JUL2016

In the matter between:

**MCE ELECTRICAL PROPRIETARY LIMITED
(Registration number: 2010/014090/07)**

Applicant

and

COMPANIES AND INTELLECTUAL PROPERTY COMMISSION

Respondent

Decision handed down on 31 OCTOBER 2016

DECISION

INTRODUCTION

- [1] This is an application in terms of section 172 and Regulation 139 of the Companies Act No. 71 of 2008 ("the Act").
- [2] The Applicant applies for a review of Compliance notice issued by the Companies and Intellectual Property Commission.

BACKGROUND

- [3] The Applicant is MCE Electronic Proprietary Limited, a private company duly incorporated in terms of the Companies Act No. 71 of 2008, as amended with its registered address at No. 32 Waterkloof, Lephalale, Pretoria, Gauteng.
- [4] The Respondent is Companies and Intellectual Property Commission, a juristic person established in terms of section 185 the Companies Act No. 71 of 2008, as amended with its physical address at Block F, 77 Meinjies Street, Sunnyside, Pretoria, Gauteng.
- [5] Companies and Intellectual Property Commission ("CIPC") issued a compliance notice to the Applicant on the finding that the Applicant failed to comply with section 30 of the Act.
- [6] According to the Compliance notice the Applicant was required:

- ***To prepare all the required annual financial statements on the basis***

required by section 30 of the Act, 2008 for the financial year ended 2012, 2013 and 2014

- To submit to the Commission copies of the Annual Financial Statements signed by the registered by the registered auditor/Independent Reviewer. Copies of Annual Financial Statements must be approved by the director of the relevant corporate entity;***
- To provide reasons to the Commission why the financial statements for the financial year ended year 2012, 2013 and 2014 were not timeously prepared by the directors of the company.”***

[7] The Applicant made an application objecting to the decision of CIPC dated 29 January 2016 and requesting the Tribunal to reverse the decision of CIPC.

[8] The Applicant seeks the following relief:

“To review the decision, for an order confirming, modifying or setting aside all or part of this Notice received from CIPC.”

APPLICABLE LAW

[9] Before I deal with the objection and/or application filed, I wish to highlight what I believe to be the relevant provisions of the Act.

Section 30 (1) of the Act

[10] Section 30 (1) reads as follows:

- (1) *Each year, a company must prepare annual financial statements within six months after end of its financial year, or such shorter period as may be appropriate to provide the required notice of an annual general meeting in terms of section 61 (7).*

Section 172 (1) of the Act

[11] Section 172 (1) reads as follows:

- (1) *Any person issued with a compliance notice in terms of this Act may apply to the Companies Tribunal in the case of a notice issued by the Commission, or to the Takeover Special Committee in the case of a notice issued by the Executive Director, or to a court in either case, to review the notice within*
- (a) *15 business days after receiving that notice; or*
- (b) *such longer period as may be allowed on good cause shown.*

EVALUATION

[12] The Deponent to the Applicant's affidavit Merika Johannes Madungandaba in paragraphs 3 states that:

“ *The Annual Financial Statements for the 2012 and 2013 periods were compiled and have been attached. Please note that the Company has been dormant since the commencement of the 2014 financial year. We commenced with a deregistration process at the beginning of the 2014 financial year in terms of section 82 of the Act. There was however a delay in deregistration due to an error at SARS.*”

[Own emphasis and underlining]

FINDING

[13] In paragraph 3 the deponent to the Applicant's affidavit states that the Applicant has been dormant since 2014 and have commenced with the deregistration of the Applicant.

[14] However, no evidence was furnished by the Applicant in support of its allegation as stated in paragraph 3.

[15] In my view the application is not sufficient based on lack of evidence.

[16] Therefore the application cannot succeed based on the limitation of submission in the current application. However the Applicant may re-apply after supplementing its papers.

ORDER

In the result the following order is made:

- a) The Application is dismissed.

MMOLEDI MALOKANE

(MEMBER OF COMPANIES TRIBUNAL OF SOUTH AFRICA)

Date: 31 OCTOBER 2016