

# THE COMPANIES TRIBUNAL OF SOUTH AFRICA

CASE NO: CT004Dec2013

In the matter between:

**Majestic Silver Trading 389 Proprietary Limited** Applicant  
(Registration number: 2008/007097/07)

and

**The Companies and Intellectual Property Commission** Respondent  
(CIPC)

**Coram: S. Gounden**

**Decision handed down on 24 February 2014**

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## DECISION

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### INTRODUCTION

- [1] The Applicant applies in terms of section 83 of the Companies Act 71 of 2008 (“Act” / “Companies Act”) and regulations 40 of the Companies Act (“Companies Act regulations” / “regulations”) for a default order that the respondent be ordered to re-instate a deregistered company.

### BACKGROUND

- [2] The Applicant registered the company “**Majestic Silver Trading 389 Proprietary Limited**” in the year 2008 and has been conducting business under that name since then.

- [3] The Applicant filed an application for CIPC to re-instate the deregistered company as stated above as prescribed by regulation 142 (1) (a), together with a supporting affidavit as required by regulation 142 (1) (b).
- [4] There is no proof that the application was served by the Sheriff / registered post to the Respondent. In terms of regulation 142 (2) it should be done within 5 days of filing it with the Companies Tribunal. The date stamp of the Companies Tribunal on the CTR 142 is the 3 December 2013.
- [5] Regulation 142 provides as follows:
- “(2) The applicant must serve a copy of the application and affidavit on the respondent named in the application, within 5 business days after filing it.”
- The copy of the application was e-mailed to the respondent on the same day as the filing.
- [6] In terms of regulation 153 (1) read with regulation 143 (1), the first respondent has 20 days to respond, failing which the Applicant is entitled to apply for a default order as provided for in regulation 153 (1).
- [7] No response was received from the Respondent and the Applicant therefore applies to the Companies Tribunal in terms of regulation 153 (2) that said Companies Tribunal makes a default order in terms of regulation 153 (1).

## **ISSUES**

- [8] The application was served on the Respondent by e-mail and not by the Sheriff or by registered post.
- [9] However, based on the findings of the Companies Tribunal on the substantive law, it is not necessary to make a finding as to defects, in [8] above, and the possible application of section 6 (9) and (10) of the Companies Act in respect of substantial compliance.
- [10] The Applicant requests that the Companies Tribunal grants the relief in the form that the Respondent be ordered to re-instate the deregistered company.

[11] The Applicant claims that the company was not dormant as it had an investment in another company in its own name and that CIPC would not re-instate the registration as CIPC has classified the company as dormant.

## **APPLICABLE LAW**

[12] The jurisdiction of the Companies Tribunal is stated in section 83 of the Act and is as follows:

“(4) At any time after a company has been dissolved (deregistered) -  
(a)...person with an interest in the company, may apply to a court for an order declaring the dissolution to have been void, or any other order that is just an equitable in the circumstances

## **EVALUATION**

[13] The question that needs to be answered is whether the Companies Tribunal has jurisdiction to grant an order in terms of Section 83 of the Companies Act.

## **FINDINGS**

[14] It is clear that the Companies Tribunal do not have jurisdiction to order the CIPC to re-instate a deregistered company, as it is not a “court”.

## **ORDER**

[15] The application that the Respondent must reinstate the deregistered company **cannot** be granted, as the Companies Tribunal does not have jurisdiction on this matter.

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**S. Gounden**  
**MEMBER OF THE COMPANIES**  
**TRIBUNAL**  
**Pretoria**