



IN THE COMPANIES TRIBUNAL OF SOUTH AFRICA

CASE NO: CT003FEB2017

In the matter between

FARMSECURE FRUIT (PTY) LTD

APPLICANT

AND

**COMPANIES AND INTELLECTUAL
PROPERTY COMMISSION (CIPC)**

RESPONDENT

Presiding Member: K Moodaliyar

Date of Decision: 2 May 2017

DECISION

INTRODUCTION

[1] The Applicant, Farmsecure Fruit (Pty) Ltd, is bringing an application in terms of section 172 of the Companies Act 71 of 2008 ("the Act") for a review of the Compliance Notice issued by the CIPC on 25 January 2017.

[2] The Applicant is private company incorporated under the company laws of South Africa, with registration number 2009/003935/07 with registered address at 33 Bell Crescent Westlake Business Park, Westlake, 7945, Cape Town.

[3] The Applicant is a wholly owned subsidiary of Farmsecure Holdings (Pty) Ltd (“FSH”) and an associate of the “FS Group”. The FS Group owns and carries on business that comprise of a wide spectrum of agricultural activities and operations ranging from primary agricultural production through to agricultural inputs to processing and distribution.

[4] An affidavit in terms of CTR 142 is deposed to by Mr. Hendrik Jelte De Vries, (“deponent”), director of the Applicant, and duly authorised to do so by the Resolution of Board of Directors of the Applicant.

ISSUES

[5] As per the CIPC Compliance Notice, the Applicant was within 40 business days of the Notice, required:

- *“To prepare all the required annual financial statements on the basis required by Section 30 of the Act, 2008 for the financial year 31 December 2013 and 2014.*
- *To submit to the Commission copies of the Annual Financial Statements signed by the registered auditor/Independent Reviewer. Copies of the Annual Financial Statements must be approved by the directors of the relevant corporate entity;*
- *To provide reasons to the Commission why the financial statements for the financial year ended 31 December 2013 and 2014 were not submitted/prepared on time.”*

[6] The Applicant filed an application with the Tribunal on 30 March 2017 objecting to the CIPC’s decision and requesting that the Compliance notice be withdrawn or modified.

APPLICABLE LAW:

[7] Before engaging with this application, I wish to highlight some of the relevant provisions of the Act.

[8] Section 30[1] reads as follows:

- (1) “Each year, a company must prepare annual financial statements within six months after the 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)”.

[9] Section 172(1) states:

- (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 periods as may be allowed on good cause shown.”

EVALUATION

[10] The Financial year-end of the Applicant is 31 December and the Companies Act requires its financial statements to be audited. However, the Applicant failed to file its financial statements for the period ending 31 December 2013 and 31 December 2014 respectively on time.

[11] According to the Deponent some of the reasons for the delay are based on the following:

- i. The FS Group, including the Applicant, is currently and since approximately July 2013, been engaged in a business restructuring and realization process under the supervision and guidance of Richard Alexander Ferguson, duly accredited and licensed as an experienced Business Rescue Practitioner by the CIPC and appointed as the Chief Restructuring Officer of the FS Group, as an independent restructuring officer.
- ii. The group restructure plan has been formulated with the knowledge of the majority of creditors and with the participation and approval of the bankers and funders of the FS Group.
- iii. The restructure plan has been materially implemented and has resulted in a significant number of transactions which have been and are in the process of being successfully concluded, involving the sale of businesses or shares of group entities, etc.
- iv. The business has not generated sufficient cash profit during this period to fund the performance of the audit process.
- v. The underlying accounting records and monthly management accounts that have continued to be prepared and distributed to key stakeholders as required throughout the restructuring period.

- vi. The restructuring process of the FS Group is entering its final stages and the directors of the Applicant undertake to obtain funding to complete the required audits.

FINDINGS

- [12] The Tribunal is satisfied that the Applicant has shown good cause to review the Compliance Notice and that a longer period is appropriate in the circumstances, as envisaged in Section 172(1)(b) of the Act.

ORDER

- [13] The Compliance Notice of the CIPC is modified to the extent that the Forty (40) Business Day period envisaged in the said Compliance Notice is extended by a period of Nine (9) Calendar months from 21 January 2016.

- [14] Accordingly, the Applicant is ordered to comply with the Modified Compliance notice by 25 October 2016.



KASTURI MOODALIYAR
MEMBER OF THE COMPANIES TRIBUNAL