

Companies Tribunal

G.U.D Holdings (Pty) Ltd v CIPC

Judgment: 13 December 2021

Keywords: Company law – Application to review CIPC compliance notice – Confidentiality of companies – Company privacy – Access to information – Corporate transparency – Corporate governance – POPIA – PAIA – PAJA – The Constitution – Companies Act 71 of 2008 ss 5(4) (i) (b) (dd) (ii), 26, 30 (4) – (6), 49(4), 172(2), 187, 212.

Summary: G.U.D. HOLDINGS (Pty) Ltd (Applicant) had submitted its claim of confidentiality in terms of s212 of the Companies Act in respect of the *entire contents* of its AFS for the year ending 30 June 2020. The Companies and Intellectual Property Commission (the CIPC) rejected Applicant’s claim on the basis that corporate transparency outweighed the request for confidentiality. Applicant applied to the Companies Tribunal (the Tribunal) for the review of the compliance notice and contended that CIPC failed to consider the nature of the information in question and whether the information in the AFS is of a confidential nature.

Discussion: Ms Tootla (on behalf of the Tribunal) considers that Applicant has previously made similar applications for other financial years to the Tribunal without providing its AFS and its review applications were dismissed for that reason and notes that in the current review application the AFS have been attached ([7]). She further considers Applicant’s grounds for claiming confidentiality (including, *inter alia*, sensitive commercial information coming to the knowledge of trade competitors) and those of the CIPC (including, *inter alia*, corporate transparency and governance, the need to make information available to the public in terms of s187) ([8] – ([21])). Ms Tootla notes that confidentiality and privacy must be looked at within the context of the Constitution, POPIA, PAIA and PAJA ([45]). She finds that s 187(4) does not establish an unfettered right of access to any person or member of the public who would not otherwise have had access to the AFS: Information available to the public in terms of s187(4) is in any event subject to regulations 176 and 177 regarding restricted information insofar as it is confidential. She also points out that s212 entitles companies to claim confidentiality of all or part of information submitted ([37] – [51]).

Order: The application for review of the CIPC’s decision is reviewed and set aside and the claim for confidentiality as claimed is granted by the Tribunal.

Decision