

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH**

Company Petition No. 90/ALD/2016
(Under Section 98(1) of Companies Act,2013)

IN THE MATTER OF:

1. Sh. Faujdar Singh
S/o Dev Sharan Singh
R/o Jariyari, Post Danganj
District Varanasi (U.P) **Petitioner.**

Versus

1. Refrac Consultation & Services Pvt.Ltd
(Having registered office at 996-A/117/A, D-10, Udaigiri
Noida-201301(U.P)

2. Mr Anant Kumar Chudhary
Son of Sh.Kapil Deo Chaudhary
R/o vill & P.O Jorepura, Distt-Samistipur, Bihar

3. Manojit Basman
Son of Jagdish Barman
R/o ward-2, Roy Para Dhupguri
Distt-Jalpiguri, W.B- Pin-735210

..... **Respondents.**

JUDGMENT/ORDER DELIVERED ON 06.09.2018

CORAM :

Sh. V.P. Singh, Hon'ble Member (Judicial)
Ms Saroj Rajware, Hon'ble Member (Technical)

For the Petitioners: *Sh. D.P Tripathi, Adv.*
For the Respondents: *Sh. Rakesh Kumar, Adv.*
alongwith
Mukesh Kumar Jha, Adv.

Per se: Ms Saroj Rajware, Member (Technical)

Order/Judgment

1. The present case is filed by the petitioner under Section 98(1)
of the Companies Act,2013.

2. Brief fact of the case are as follows: -

a. The Respondent Company was incorporated as private
company under the company Act on 30.07.2010. The authorized

share capital of company as on the 30.07.2010 was Rs.1 lac divided into 100 equity share Rs.10/-each. **(Copy of Memorandum and Article of Association is Annexed as Appendix-1)**

- b. Petitioner stated that he holds 2500 equity share in the Respondent Company and Respondent No. 2 is M.D. of the Company and petitioner is one of the director of the company. **(Petitioner has annexed relevant copy of the Memorandum of Association reflecting his Shareholding as Appendix 2 of the petition)**
- c. Petitioner further stated that as per Article 40 of the Article of Association of the Company, a meeting of Board of Director shall be held at least once in every three calendar months and at least 4 such meetings shall be held in each calendar year and in the Article 41 of the same memorandum it is given that notice of every meeting of the Board of Director of company shall be given in writing to every director for the time being in India at his usual address but petitioner alleged that the respondent No. 2 and 3 did not perform their duty accordingly.
- d. Hence petitioner stated that on the reason above petitioner sent a legal notice on 20.11.2015 to respondents stating therein to call the extra ordinary general meeting under Section 100 of the Company Act. **(The said notice is annexed in the amendment company petition as Appendix-3 of the petition).**
- e. Petitioner further stated that without considering the averment of notice sent by petitioner, the respondent No 2 had replied through his counsel and controverted by saying that earlier meeting was held on 30.10.2015 therefore next meeting could not be held. **(The copy of reply of notice dated 19.12.2015 is annexed as Annexure No. 4 of the Company Petition)**
- f. That the petitioner given reply to the notice of respondent No. 2 on 26.12.2015 and given another opportunity to respondent to call for meeting but same has not been done.
- g. Hence on the ground above petitioner filed present Company petition under Section 98(1) of the Company Act, 2013 to call for

meeting stating that respondent failed to perform their duties as per Article of Association of the Company.

3. It is matter of record that respondent has replied to the averment taken by the petitioner stating that:
 - a. Petitioner is one of the director of the Respondent Company and accepted that he served a legal notice dated 20.11.2015 to respondents regarding calling general meeting.
 - b. Respondents further informed that they gave reply to the petitioner notice dated 20.11.2015 stating that earlier on 30.10.2015 Board meeting was held, so meeting could not be held on 21.12.2015 as demanded by the petitioner. Therefore, notice of next Board Meeting was sent to the petitioner **(Copy of notice dated 09.02.2016 calling for Board Meeting is annexed as Annexure A)**.
 - c. Respondent further informed that they are regularly filing returns with ROC, Kanpur **(Copy of Annual Return of the Company ending on 31.03.2015 & 31.03.2016 is annexed as Annexure B of the reply)**
 - d. Hence, respondent submitted that “They have no objection in calling Extra Ordinary General Meeting as sought by petitioner at the place and date as may be directed by this Court”.
4. It is matter of record that this Tribunal vide its order dated 09.11.2017 directed respondent to convene AGM under the supervision of the Ld. observer appointed by the Tribunal and partly allowed the Company Petition.
5. Thereafter Ld. Observer, Mr Sahid Kazmi Advocate has filed his report stating that meeting was held on 09.12.2017 at the registered office of the company, and in the said meeting petitioner and respondent No. 2 and 3 were present, and also promoter/director share holder of the company participated in this meeting and the next date was fixed for Meeting on 22.12.2017 at Surat (Gujarat).
6. Petitioner further during filing reply to observer report stated that documents that are necessary for having effective discussion in the meeting of Board of Directors were not provided. Hence, despite their participation in the Board of Director meeting on 09.12.2017, it could not be treated to be held properly. Further petitioner alleged that

respondent again failed to conduct Board meeting to be convened on 22.12.2017.

7. Petitioner stated that the respondent informed to the petitioner that meeting will be held on 28.12.2017 at Registered office of the Company, and in the said meeting petitioner demanded required documents for smooth functioning of the company and participating in the company affairs but same has not provided to the petitioner.
8. Hence, petitioner stated of that no further meeting was called upon by respondents, except the meeting before learned observer, therefore, the grievance of petitioner.
9. Hence petitioner stated that given the fact above and circumstances of Tribunal may be pleased to allow the petition and direct the respondent to provide the documents as required by the petitioner and also perform their duty by the company Act as well as memorandum of the company.
10. Heard the Ld. Counsel for the both the side and perused the records available.
11. Since present matter is filed under provision of the section 98 of the Companies Act, 2013 whereby petitioner being Director/Shareholder made an application to this Tribunal to exercise the power conferred in the section to call the meeting of the respondent company, section 98 are brought out for ready reference:

98. Power of Tribunal to call meetings of members, etc

(1) If for any reason it is impracticable to call a meeting of a company, other than an annual general meeting, in any manner in which meetings of the company may be called, or to hold or conduct the meeting of the company in the manner prescribed by this Act or the articles of the company, the Tribunal may, either *suo motu* or on the application of any director or member of the company who would be entitled to vote at the meeting, —

(a) order a meeting of the company to be called, held and conducted in such

manner as the Tribunal thinks fit; and

(b) give such ancillary or consequential directions as the Tribunal thinks

expedient, including directions modifying or supplementing in relation to the calling,

holding and conducting of the meeting, the operation of the provisions of this Act or articles of the company:

Provided that such directions may include a direction that one member of the company

present in person or by proxy shall be deemed to constitute a meeting.

(2) Any meeting called, held and conducted in accordance with any order made under sub-section (1) shall, for all purposes, be deemed to be a meeting of the company duly called, held and conducted.

12. In the present matter, this Tribunal has called the meeting of the respondent company vide its order date 09.11.2017 under supervision of Ld. Observer and meeting was convened on 09.12.2017 and attended by the petitioner & the respondents. But the petitioner has now alleged that respondent failed to provide all necessary documents as required for discussion in the meeting. From perusal of the report of the observer filed before the tribunal, it is noted that the meeting was held in cordial atmosphere and there is no mention of non-providing of any documents either in observer's report or minutes of meeting.

13. Assuming petitioner still wants to peruse the documents of the company, Respondent has already submitted its willingness to make available all statutory records of the respondent company to the petitioner. Since AGM has already been held in compliance of the order of this tribunal, therefore there is no further relief left to be granted to the petitioner under this petition.

Order

1. That this Tribunal has already granted relief to the petitioner and meeting has been held under supervision of court appointed observer and now the remedy which petitioner seeks, that, next meeting should be convened with providing all the necessary documents to the petitioner, is not tenable.

2. Further, meeting of a company can be called under section 98, if for any reason it is impractical to call a meeting, and Petitioner failed to demonstrate any situation that it is impracticable to hold meeting.

4. Hence, petition has become infructuous, hence rejected.

5. No order as to cost.

(Ms. Saroj Rajware)
Member (Technical)
06.09.2018.

(V.P Singh)
Member(Judicial)

