IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH

Company Petition No. 40/ALD/2017
(*Under Section 97 of the Companies Act,2013)*

IN THE MATTER OF:

1. **Jaswinder Singh Bajaj & Others**

…….Petitioner

Versus

1. **Shahjahanpur Club Private Limited**
   (Having Registered Office at:
   12, Cantonment, Shahjahanpur- U.P)

2. **Mr.Hargovind Modi, Joint Secretary,**
   Shahjahanpur Club Private Limited
   (Having Registered Office at:
   12, Cantonment, Shahjahanpur- U.P)

3. **The Registrar of Companies, Kanpur-U.P.**

4. **Mr Jagjeet Singh Matta.**
   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: Sanjay Saxena, PCA.
For the Respondents: Adesh Tondon, PCS.
For the Central Gov: Shivendra Bahadur, CGSC.

AS PER: Ms Saroj Rajware, Member (Technical)

Order/Judgment

1. The present case is filed by the petitioner under Section 97 of the Companies Act,2013 for directing the Respondent

Company **"Sahjahanpur Club Private Limited"** to convene the Annual General Meeting of the Club for the financial year 2014-2015 by Law.

2. Brief facts of the case are as follow:

i. The Respondent Company "**Shahjahanpur Club Private Limited"** was incorporated on 9th September 1916 vide Regn. No. 000032 as private limited company, limited by shares, for social purposes. Having its Registered Office at 12, Cantonment, Shahjahanpur, UP.

ii. Petitioner stated that company since its incorporation pursued its object for which the company was formed and has been carrying on its activities as provided under the object clause of the Memorandum of Association of the company. ***(Copy of Memorandum and Article of Association is annexed at P-9 to 23 of the petition)***

iii. Petitioner further stated that the following were duly elected directors in the AGM of 2013 for two years: -

(1) Sri Jaswinder Singh Bajaj
(2) Sri Krishna Kumar Agarwal
(3) Sri Sunil Kumar Singhal
(4) Sri Sanjeev Kumar Kanaujia'
(5) Sri Upendra Dev Kapoor
(6) Sri Ashok Agarwal
(7) Sri Sanjay gupta
(8) Sri Pramod Chandra Seth
(9) Sri Har Govind Modi
(10) Sri Manish Agarwal
(11) Sri Ravi Goel

iv. Petitioner stated that Board of Directors in the meeting held on 2nd Sep 2015 decided to hold the Annual

General Meeting for the year 2014-15 on or before 25/09/2015 for the next financial year.

v. After that, District Magistrate being the chairman of the Club, vide letter dated 25.09.2015 directed the Secretary of the club to hold a General Meeting on 20.10.2015 to elect new Directors, which as per petitioner was contradictory to the Article of Association of the company and Companies Act, 2013. ***(Letter dated 25.09.2015 of District Magistrate is attached on page no. 1 & 2 of the paper book)***

vi. Petitioner further stated that on getting knowledge that directors as on 20/10/2015 (which were elected in AGM of 2013) were shown as retired in EGM. Hence the majority Board of Directors elected in AGM of 2013 decided to approach the Registrar of Companies, Uttar Pradesh to take permission for extension of time to hold AGM.

Sh. Jaswinder Singh Bajaj, Director (petitioner) was also authorised to take all legal steps in this regard.

vii. Petitioner stated that all the petitioners are permanent members of the company and few of them are shareholders also and as per Articles of the company only permanent members are entitled to vote either in person or by proxy. Further as per AOA of the company, neither honorary nor temporary members are entitled to attend the AGM, and they are also not entitled to vote. ***(Petitioner has annexed the Minutes of Board***

meeting dated 18.10.2015 attached on page no. 3 of the paper book, whereby he is authorized to file petition before the Tribunal)

viii. Petitioner stated that accordingly, they applied for extension of time to hold Annual General Meeting before ROC with wide SRN C67349381 ***(Challan dated 20.10.2015 is annexed)***

ix. Petitioner alleged that meantime the respondents no. 1 & 2 (knowing well that application has been moved for extension of time to hold legal AGM), taking pretext of District Magistrate's letter forcefully organised a meeting at 6.10 PM on 20.10.2015 and termed it as Annual General Meeting in the records. ***(Copy of minutes as well as attendance sheet is annexed at the page no. 6 to 12 of the paper book)***

x. And Petitioner stated that in the so called AGM the following were elected as Directors of the Company.

Sri Vineet Tandon (Form DIR-12 filed as on 27.10.2015)
Sri Sanjay Chopra (Form DIR-12 filed as on 27.10.2015)
Sri Jagjeet Singh Matta (Form DIR -12 filed as on 27.10.2015)
Sri Shiv Khanna Narain (Form DIR -12 filed as on 05.11.2015)
Sri Vinod Kumar Viz (Form DIR -12 filed as on 05.11.2015)
Sri Raj Gopal Agarwal (Form DIR -12 yet to be filed.)

xi. Accordingly, form DIR- 12 was filed by the newly appointed directors on 27.10.2015 and 05.11.2015. Petitioner stated that It is clear from the proceedings of claimed AGM submitted with form DIR -12 that the meeting was only for appointing the Directors and no

other business was considered. Both the Form DIR-12 thus filed were approved by the ROC, UP, in spite of the complaint made by us to the Registrar of the Companies, Uttar Pradesh.

xii. Petitioner stated that meanwhile the Registrar of Companies, Uttar Pradesh rejected the extension of time application of the plaintiff on 02.11.2015. ***(Copy of the rejection letter of the ROC attached on page no. 5 of the paper book.)***

xiii. Petitioner stated that on knowing the above facts and act done by the respondent a complaint was made in the office of the Registrar of Companies, Uttar Pradesh on 03.11.2015 requesting to take appropriate action against the respondent no. 1 & 2 as per the law.

xiv. Petitioner informed that on complaint, Registrar of Companies, Uttar Pradesh called for written reply from the respondents No. 1 & 2 and respondents No. 1 & 2 vide their reply dated 10.12.2015 changed their version and claimed that it was not an Annual General Meeting but was a general meeting held for electing new Board of Directors. Hence petitioner alleged that this means that the Extra Ordinary General Meeting was held by the company on 20.10.2010 for which there was no consent/approval from the Board of Directors and no notice explaining the nature of business to be done was circulated as per law.

xv. Petitioner also stated that as per the provision of the Companies Act, 2013 the General Meeting is required to be held between 9.00 am to 6 PM but the same has been held on 20.10.2015 at 6.10 PM and it is not valid as per the law. ***(Copy of the minute's book dated 20.10.2015 attached on page no. 11 of the paper book).***

xvi. Petitioner informed that after detailed enquiry the Registrar of Companies. Uttar Pradesh vide letter dated 18.12.2015 advised the complainant/petitioner to approach the Company Law Board Under Section 97 of the companies Act, 2013. ***(copy of ROC letter attached on page no. 32 of the paper book).***

xvii. Hence petitioner has prayed for calling fresh AGM of the Respondent Company stating that meeting held on 20.10.2015 cannot be termed as AGM of the financial year 2014-15.

3. Respondent has filed reply to the petition stating that: -

(i) Petitioner is not the shareholder. Hence he cannot file petition under section 97 of the Companies Act,2013. ***(Copy of list of shareholders as on 31.03.2014 and 31.03.2016 is annexed as Annexure-1 of the reply)***

(ii) Respondent further stated that in the Board meeting held on 26.08.2013, it was decided that the tenure of the Director would be for two years from date of election ***(Copy of minutes of the said board meeting is***

enclosed as Annexure-4). Therefore, it is wrong to state that they are in continuance as Director in the Club as their tenure has expired before 30.09.2015 and respondents were duty bound to hold the Annual General Meeting and Conduct the Election.

(iii) Respondent informed that Board meeting was held on 02.09.2015 under chairmanship of Sri M.N Upadhay, ADM (E), Representative of the Chairman Smt. Shubhra Saxena, IAS (DM Shahjahanpur). In the Board meeting it was proposed that the annual general meeting of the company shall be held between 24th September 2015 to 26th September 2015 and the tenure of the Director shall be fixed for one year instead of two years, however the above proposal was not approved by the chairman of the meeting and at this stage tenure of then existing board of directors was due to be expired on 25.09.2015 but no annual general meeting of the company was held till that date to conduct the election process. Thus in the circumstances, it was decided by the DM Shahjahanpur to call general meeting on 20.10.2015 for election of directors as the tenure of the existing board ended on 25.09.2015 and they could not function as board of directors.

(iv) It is correct that subsequently, a general body meeting took place on 20.10.2015 on the instructions of the chairman Hon'ble District Magistrate of Shahjahanpur vide letter dated 25.09.2015 ***(the copy of the minutes***

of the said general meeting along with letter of Hon'ble DM is enclosed herewith the as Annexure-6). It is the noticeable point that the applicant during the period from 25.09.2015 to 20.10.2015 had not raised any objections on the validity of the proposed general body meeting scheduled to be held on 20.10.2015, as per the directions of Hon'ble DM Shahjahanpur, for the election of the new directors although two board meetings dated 06.10.2015 and 18.10.2015 were held during this period ***(Copy of the minutes of the said board meetings is enclosed herewith as Annexure-7).*** It is pertinent to mention here that it is the practice since a long time of the club that the DM shall be the chairman and the SP shall be the secretary in the meetings of the club, and it has always been treated so. Further, in the board meeting dated 08.09.2014 it has been again affirmed by the then Board of Directors including the petitioner Mr Jaswinder Singh Bajaj which demonstrates the admission on the part of applicant himself ***(Copy of the minutes of the said board meeting is enclosed herewith as Anneuxre-8).***

(v) Respondent further denied that any director from the board has been removed since if an election take place and somebody is not elected or do not file the nomination, and the members elect the other directors then it could not be construed as removal. Respondent submitted that the word "removal" arises when there is

continuation of the office of director and the director is removed before the end of tenure. Therefore, if anybody fails to get elected for any reason whatsoever, it would not be fair to use the word “removal”. It is most respectfully submitted that this application is precisely to challenge the appointment of directors and election process that too after more than 18 months. The respondent is not making any submission whether election/selection can be challenged or not. It is also well within the knowledge of the petitioner that the two words “election” and “selection” cannotes the different meaning. It is most respectfully submitted that if for any reason the petitioner herein had applied for the extension of annual general meeting which was refused, the applicant remained silent spectator to the situation and did not go for appeal against the order of the office of Registrar of Companies dated 02.11.2015. It is pertinent to mention here that the application for extension was made on 20.10.2015 whereas as per the provision of the Companies Act, an annual general meeting ought to have been held on or before 30.09.2015 and had to be applied before 30.09.15, and the extension cannot be applied after expiry of due date for annual general meeting. It is also pertinent to mention that the application for extension by Jaswinder Singh Bajaj, the applicant, was made on the date on which the meeting was scheduled by the D.M for

electing new Board of Directors and not at the relevant time, i.e. at least the first week of the September 2015.

(vi) *Respondent has further stated that as per contention of the petitioner the director could not be appointed in the General Meeting but only in AGM as mandated in the Article of Association is not tenable because as per section 152(2) of the Companies Act 2013 provides that director shall be appointed by the company in general meeting and Act overrides the Article of Association.*

(vii) Further Respondent No.4, i.e. Mr.Jagjeet Singh Matta has also filed reply stating that Annual General Meeting of Club has already taken place on 15th July 2016 which is evident from the form MGT-7 annexed by the respondent no.1 in their reply. Hence allegation that once AGM of the club for the year 2015 has not been held in time, it cannot be constructed that the AGM for the year 2015 has not been held at all. Therefore, stated that application is infructuous.

(viii) Hence, respondents through their reply prayed that petition should be dismissed.

4. Petitioner has further filed rejoinder to the points taken by the respondents in their reply stating that:

(i) Mr. Pramod Chandra Seth with his signatures as chairman held the AGM on 20.10.2015 without taking extension and permission of holding AGM from the ROC.

(ii) Further stated that meeting held on 20.10.2015 was not AGM but it is EOGM and as per MOA and AOA if director are to be appointed in the company then the appointment shall be done only in AGM, but this procedure was not followed by the company instead directors were appointed in EOGM, which is complete violation of AOA.

(iii) Further petitioner relied on the ROC letter dated 18/12/2015 against the complaint of the petitioner wherein ROC advised petitioner to apply to the CLB u/s 97 of the Companies Act,2013 for necessary direction***. (Copy of ROC Letter dated 18/12/2015 is annexed Annexure C in rejoinder).***

(iv) Further stated that holding meeting on 20.10.2015 without taking prior approval from competent authority clearly is non-compliance of section 96 of the Companies Act,2013. Hence stated that AGM held on 20.10.2015 was invalid AGM.

5. Heard the Ld. Counsel for the petitioner and all the respondents at length, perused the record available.

6. Since present matter is filed under section 97 of the companies act through which petitioner has asked this Tribunal to call for AGM, hence it is relevant to produce provision of section 97 of the Companies Act,2013:

97. Power of Tribunal to call annual general meeting

(1) If any default is made in holding the annual general meeting of a company under section 96, the Tribunal may, notwithstanding anything contained in this Act or the articles of the company, on the application of

any member of the company, call, or direct the calling of, an annual general meeting of the company and give such ancillary or consequential directions as the Tribunal thinks expedient:
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) A general meeting held in pursuance of sub-section (1) shall, subject to any
directions of the Tribunal, be deemed to be an annual general meeting of the company under
this Act.

7. A perusal of record shows that that Applicant/Petitioner in the present matter i.e. Jaswinder Singh Bajaj was appointed as director of the Respondent Company on 26.09.2013 for the period of two years and he has moved this petition under Section 97 of the Companies Act,2013, for calling AGM of the Respondent Company for the financial year 2014-2015, alleging that meeting held on 20.10.2015 is not valid/legal AGM.

8. A perusal of Section 97 of the Companies Act,2013 clearly states that application under this section can be moved by any member of the Company but the Petitioner failed to produce any evidence which would reflect him as member of the Company, Petitioner in itself has annexed the List of the Shareholder ***(List of shareholder is annexed at P.57-58 of the Petition)*** of the Respondent Company which clearly shows he is not the shareholder in the Respondent Company, and as Director of the Respondent Company he has no capacity to move application u/s 97 of the Companies Act,2013 and petition is not maintainable.

9. From perusal of record, it is clear that the directors/ petitioner was appointed for tenure of 2 years, i.e. upto 25.09.15 and they were duty bound to hold the AGM and conduct the elections

before 25.09.15. They couldn't extend period of their tenure by not holding the AGM and take advantage of their default. In the circumstances, holding of general meeting on 20.10.2015 vide the letter dated 25.09.15 of the District Magistrate/Chairman of the respondent company and election of new directors cannot be questioned by the defaulting petitioner, who anyway has no locus to move application under section 97 of the Companies Act 2013.

10. Since this petition does not fulfil the requirements of section 97 of the Companies Act,2013 where only member of the company is entitled to move application and in present matter petitioner/applicant is not member, hence present petition is liable to be rejected, accordingly rejected.

11. No order as to cost.

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

(V.P Singh)
Member(Judicial)