

25
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

C.P. No. 52/98/NCLT/AHM/2017



Coram:

Present: Hon'ble Mr. BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 24.08.2017**

Name of the Company: Renu Yajnik
V/s.
Kruppa Paints Pvt Ltd. & Anr.

Section of the Companies Act: Section 98 of the Companies Act, 2013

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	VAIBHAVI K. PARIKH. a.w. KAVANKUMAR MANKAD	} Adv.	R-2	
2.	Ayaan. Patel, Adv For, A.J. Vohra, Adv.		Petitioner	

ORDER

Learned Advocate Mr. Ayaan Patel i/b Learned Advocate Mr. Apurva Vakil present for petitioner. Learned Advocate Ms. Vaibhavi Parikh present for Respondent no. 2.

Order pronounced in open Court. Vide separate sheet.


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Dated this the 24th day of August, 2017.

**BEFORE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH**

C.P. No. 52/98/NCLT/AHM/2017

In the matter of:

Ms. Renu Yajnik
Residing at B-501,
Rainbow Flats,
Opp: Shailley Tower,
Opp: Ketav Petrol Pump,
Ambawadi,
Ahmedabad-380015

: Petitioner.

Versus

1. M/s. Kruppa Paints Private Limited,
Registered Office at
Plot No.86, GVMMSV
(Gujarat Vepari Maha Mandal SV Ltd.)
Odhav,
Ahmedabad-382415, Gujarat.

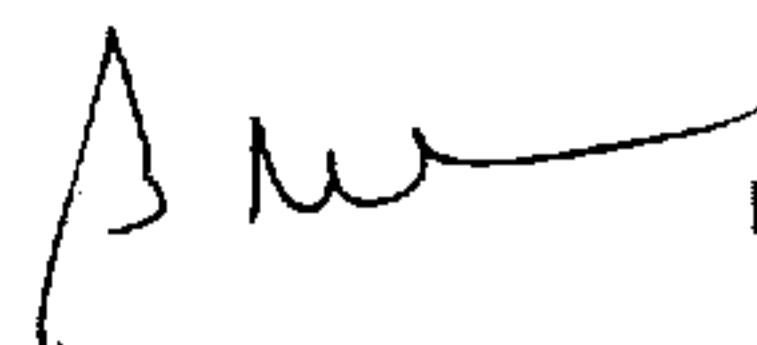
2. Ms. Mrudula Indravadan Shah
Residing at Flat No.A/402,
Aditraj Greens,
Near Shailly Towers,
Opp: Ketav Petrol Pump,
Ambawadi,
Ahmedabad-380015

3. Registrar of Companies
ROC Bhavan,
Opp: Rupal Park Society
Behind Ankur Bus-Stop
Naranpura
Ahmedabad-380013

: Respondents.

Order delivered on 24th August, 2017.

Coram: Hon'ble Sri Bikki Raveendra Babu, Member (J).



Appearance:

Shri Apurva Vakil, learned Advocate for Petitioner.

Shri Tushar Hemani with Ms. Vaibhavi Parikh, learned Advocates for Respondent No.2.

None present for Respondents No. 1 and 3.

ORDER

1. Petitioner, claiming to be shareholder holding 96.55% shares in the 1st Respondent Company, filed this Petition praying for a direction to conduct General Meeting of the 1st Respondent Company for the purpose of appointing the Petitioner as Director of the Company, and with a further direction that one Member shall constitute Quorum.

2. The facts in brief, that are necessary for the purpose of disposal of this Petition, are as follows;

2.1. M/s. Kruppa Paints Private Limited [hereinafter called as "1st Respondent Company"] was incorporated on 08.8.2006. The Authorised Share Capital of the Company is Rs. 32,00,000 divided into 3,20,000 equity shares of Rs. 10 each.

2.2. Petitioner is daughter of Ms. Shakuntala who is the divorced wife of Indravadan Shah. Second Respondent is the second wife of Indravadan Shah.

2.3. Late Indravadan Shah, 2nd Respondent and one Mr. Bharat Patel were the initial subscribers to the Memorandum of Association and first Directors of the 1st Respondent Company holding 5000, 4000 and 1000 shares respectively.

2.4. Mr. Bharat Patel resigned as Director of the Company on 06.9.2014.



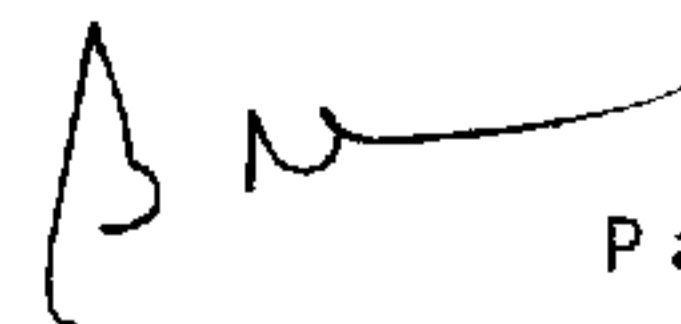
2.5. The Paid-up Share Capital of the Company is 1,45,000 equity shares of Rs. 10/- each, i.e., 14,50,000. Late Indravadan Shah was holding 1,40,000 equity shares and Respondent No.2 is holding 5000 equity shares. Late Indravadan Shah by his letter dated 19.10.2015 informed the Board of Directors of the 1st Respondent Company expressing his wish to gift his shareholding of 140000 shares to the Petitioner. Petitioner by his letter dated 20.10.2015 conveyed her no objection to the said transfer. In the Board Meeting of the 1st Respondent Company held on 23.10.2015 it was resolved that 140000 equity shares of late Indravadan Shah are transferred to the petitioner. The original Share Certificates are with the Petitioner. Accordingly, the Petitioner is holding 96.55% share of the Paid-up Share Capital.

2.6. After the resignation of Mr. Bharat Patel, one Mr. Gaurang Kapadia was appointed as 'Additional Director' on 06.9.2014 and his appointment was regularised in the Annual General Meeting ["AGM"] held on 30.9.2014. The said Mr. Gaurang Kapadia resigned as Director with effect from 07.11.2015. There are only two Directors in the 1st Respondent Company, i.e., late Indravadan Shah and Respondent No.2. Indravadan Shah died on 28.02.2016 after prolonged treatment due to a prolonged illness in SAL Hospital after admission on 21.01.2016.

2.7. Shri Rajiv Yajnik, husband of the Petitioner was appointed as 'Additional Director' on 27.11.2015. The Annual General Meeting of the 1st Respondent Company could not be held on or before 30.9.2016 and as a result appointment of Mr. Rajiv Yajnik could not be regularised. Petitioner convened the requisitioned Extra-ordinary General Meeting {"EOGM"} of the 1st Respondent Company on 04.01.2017 wherein Petitioner was appointed as 'Director' of the Company. Petitioner was under bona fide belief that the appointment of her husband as 'Director' was valid and therefore the Board of Directors of the 1st Respondent Company consist of Respondent No.2; Petitioner and her husband Rajiv Yajnik. Petitioner admitted

that the Resolution passed in EOGM held on 4.1.2017 is not a valid Resolution since there was no Board of the 1st Respondent Company to consider the requisition under Section 100 of the Companies Act. Husband of the Petitioner managed affairs of the 1st Respondent Company with a belief that he is a Director of the Company. In such situation, on 5.1.2017 in the Board Meeting various Resolutions were passed changing the Authorised Signatory of the Company and appointing the Petitioner and her husband severally to operate the Company's Bank Accounts with State Bank of India, Oriental Bank of Commerce etc.

2.8. The 2nd Respondent filed an Affidavit-cum-Declaration before the Ministry of Corporate Affairs on 25.01.2017 stating that Rajiv Yajnik ceased to be Additional Director of the Company with effect from 30.9.2016 and therefore there is only one Director in the Company, i.e., herself (Respondent No.2). Respondent No.2 proposed to appoint another Director under Section 174(2) of the Companies Act. Respondent No.2 also filed Form No.DIR-12 in respect of cessation of Rajiv Yajnik as Director of the Company w.e.f. 30.9.2016. Respondent No.2 also filed a complaint dated 30th January, 2017 with the Registrar of Companies making allegations against the Petitioner and her husband Rajiv Yajnik. In February 2017 Petitioner and her husband were prevented from entering into factory premises of the 1st Respondent Company and participating in any manner in the affairs of the Company, and denied access to the records of the Company. 2nd Respondent also addressed a letter dated 22nd February, 2017 to State Bank of India stating that she is the Director and shareholder and she has been authorised by the Board of Directors to operate Company's Current account with State Bank of India and that some other authorised persons were trying to take control of the Company. Petitioner addressed letters dated 2.3.2017 and 7.3.2017 to Respondent No.2. Petitioner also got issued a legal notice dated 30.3.2017 to Respondent No.2. Petitioner stated that even the salary of some of the members of the staff of the 1st

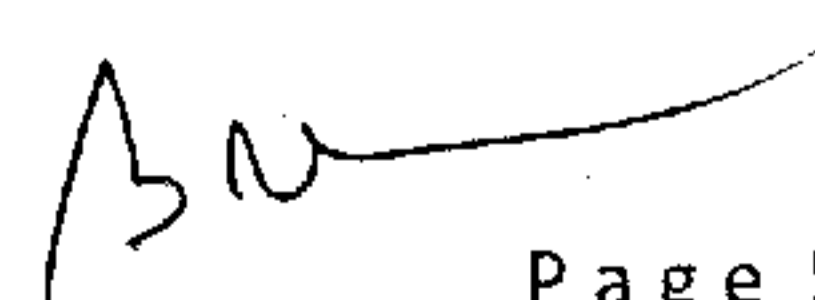


Respondent Company has not been paid since Respondent No.2 is not signing the cheques.

2.9. Further it is stated in the Petition that Section 98 enables this Tribunal to order to conduct Meeting of the Company and to give ancillary directions. It is further stated that Petitioner being the shareholder of 96.55% shares is denied of any role in the management of the Company. It is stated that the Board of Directors of the Company consists of only Respondent No.2 as Director and therefore it is not competent under Section 100(4) of the Companies Act to call a meeting of the Company upon the requisition given by the Petitioner under Section 100(2) within 21 days from the date of receipt thereof. It is further stated that in the absence of competent Board which is unable to comply with the first part of Section 100(4) of the Companies Act Petitioner cannot act under second part of Section 100(4) and hold meeting of the Company within a period of three months. It is further stated that even if a meeting is held Respondent No.2 may not attend and thereby there will not be any quorum. According to the Petitioner it is impracticable to conduct General Meeting or to call Extra-ordinary General Meeting of the Company and therefore in these circumstances in order to safeguard the interest of majority shareholders, this Tribunal can give directions to conduct meeting under Section 98 of the Companies Act.

3. Respondent No.2 is contesting this Petition on the following grounds;

- (i) Rajiv Yajnik is ceased to be Additional Director with effect from 30.9.2016;
- (ii) No EOGM was held on 4.1.2017 and the so-called Resolutions passed in the purported EOGM on 4.1.2017 were invalid including the appointment of Petitioner as Director of the 1st Respondent Company.



(iii) Petitioner and her husband committed several illegal acts in the affairs of the Company. After 2nd Respondent filed Complaint dated 30th January, 2017 Petitioner and her husband having no other recourse to take control of the 1st Respondent Company, filed this frivolous Company Petition.

(iv) Respondent No.2 pleaded that she has filed Civil Suit No. 764 of 2017 in City Civil Court, Ahmedabad against the Petitioner and her husband and others challenging the validity of the transfer of shares of late Indravadan Shah in the name of Petitioner and therefore Respondent denied that the Petitioner is the shareholder of 1st Respondent Company.

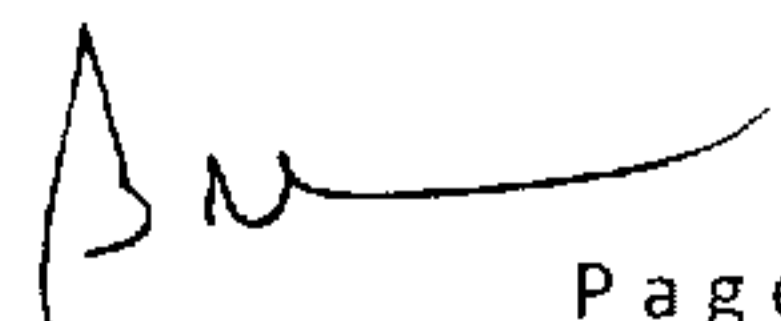
(v) Petitioner without making a valid requisition under Section 100 of the Act to the Board of Directors for calling a meeting, based upon the presumptions, Petitioner came to the conclusion that calling of Annual General Meeting is impracticable. Respondent No.2 further pleaded that since the death of Indravadan Shah Mr. Rajiv Yajnik had taken the entire control of the 1st Respondent Company illegally and was operating the Company illegally and therefore Respondent No.2 never got a chance to call for a meeting.

4. In the Rejoinder, it is stated that late Indravadan Shah never executed any Will Deed dated 2.2.2016 and he was not in a sound and disposing state of mind from 21.1.2016. According to the Petitioner on 23.10.2015 itself 140000 shares of late Indravadan Shah had already been transferred in the name of the Petitioner and therefore Indravadan Shah had no disposing power to bequeath 140000 shares under alleged Will Deed dated 2.2.2016. It is further stated by the Petitioner that Shah Narielwala and Company was appointed as Chartered Accountants of the 1st Respondent Company On 30.9.2015 even before the transfer of 140000 shares to the Petitioner and even before the appointment of husband of the Petitioner as Additional Director of the Company. The financial

statements for the year ending 31.3.2016 could not be finalised because of non-cooperation of Shah Narielwala & Company. In order to complete the accounts for the year ending 31.3.2016 Shah Narielwala & Company were again brought in by reappointing them on 16.8.2016. At that time Respondent No.2 and husband of the Petitioner were Directors of the Company. Under those circumstance Panchal and Associates, Chartered Accountants submitted their resignation on 11.8.2016. Thereafter Shah Narielwala and Company resigned on 11.11.2016. The letter of Shah Narielwala and Company dated 11.11.2016 disclose that final audit for the financial year 2015-2016 remained pending on account of non-resolution of queries due to the differences amongst the Directors, i.e., Respondent No.2 and husband of the Petitioner. Petitioner stated that Respondent No.2 and Gaurang Kapadia in their E.Mail dated 13.11.2016 recognised Rajiv Yajnik as 'Additional Director' of the 1st Respondent Company even beyond 30th September 2016. Petitioner further stated that two months after the documents evidencing the transfer of shares Respondent No.2 and late Indravadan Shah addressed a letter dated 20th January, 2016 falsely stating that there was no transfer of shares and shareholding pattern remained the same as on 31.3.2015. Respondent No.2 thereafter relied upon the alleged Will Deed dated 2.2.2016. Petitioner stated that her husband always cooperated in the matter of holding AGM on or before 31.3.2015. Petitioner denied that she and her husband never committed any illegal acts as alleged, in the conduct of the Company.

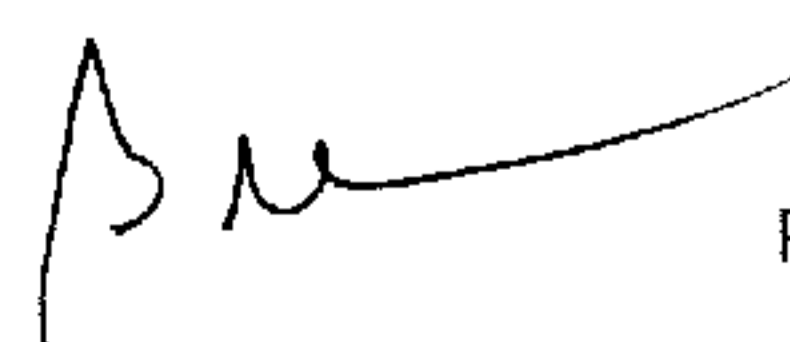
5. Heard learned Counsel appearing for the Petitioner and learned Counsel appearing for the Respondent No.2.

6. As things stand now, Petitioner clearly admit that her husband Rajiv Yajnik ceased to be Director with effect from 30.9.2016. Petitioner also admitted that the EOGM held on 4.1.2017 is not a valid meeting and the appointment of Petitioner as Director is not valid.



7. Petitioner claims to be a shareholder with 96.55% shareholding in the 1st Respondent Company on the basis of transfer of 140000 equity shares of her late father in her name. In this context, reference can be made to the documents dated 19.10.2015, 20.10.2015, 21.10.2015 and 23.10.2015 written by late Indravadan Shah to the Petitioner. A perusal of the letter dated 19.10.2015 written by late Indravan Shah to the Board of Directors of the Company goes to show that he wished to gift the same to his daughter Renu Rajiv Yajnik (Petitioner) and requested the Board to note the same and provide confirmation letter. A perusal of the letter dated 20.10.2015 written by 1st Respondent Company to the father of the Petitioner Indravadan Shah goes to show that Company has no objection for the said transfer. A perusal of the letter dated 21.10.2015 written by the 1st Respondent Company to the Petitioner goes to show that original share certificates of 140000 of Rs. 10 each have been transferred from Indravadan Shah to Petitioner. Petitioner also filed the share certificates with endorsement of transfer. Petitioner also filed Form No.SH-4 to show that the shares of Indravadan Shah were transferred to Petitioner and the name of the Petitioner is incorporated in the Register of Transfer on 23.10.2015.

8. No doubt, Respondent No.2 on the basis of a Will Deed dated 2.2.2016 said to have been executed by late Indravadan Shah which is after the date of transfer of shares, filed Civil Suit No. 764 of 2017 on the file of Ahmedabad City Civil Court, Ahmedabad for a declaration that transfer of 96.55% shares of Indravadan Shah in favour of Petitioner herein is a fraudulent transfer on account of undue influence, coercion and fraud and other reliefs. The said Suit is pending. Till a decision is given in the Civil Suit against the Petitioner in respect of the transfer of shares of late Indravadan Shah, Petitioner shall be treated as a shareholder of the Company with 96.55% shares and therefore Petitioner is competent to file this Petition under Section 98 of the Companies Act, since the Register of Members and Share Transfer Certificates are, prima facie, proof of shareholding.



9. Section 98 gives power to this Tribunal to call meetings of Members on an application filed by the Director or Member or *suo motu*. The only circumstance under which this Tribunal can exercise power under Section 98 of the Act is when it is impracticable to call for a meeting of the Company other than an Annual General Meeting.

10. Therefore, in order to have a relief under Section 98, it is for the Petitioner to establish that it is impracticable to call an EOGM of the Company to appoint Directors.

11. The first plea of the Petitioner is that there is no competent Board to consider the requisition given by the Member, i.e., Petitioner to call for an EOGM.

12. It is an admitted fact that after Rajiv Yajnik ceased to be an Additional Director with effect from 30.9.2016, there is only one Director, i.e., 2nd Respondent. It is a fact that there must be at least two Directors. In such circumstances, the existing Directors are supposed to act under Section 174 of the Companies Act. Section 174 of the Companies Act reads as follows;

174. *“(1) The quorum for a meeting of the Board of Directors of a company shall be one-third of its total strength or two directors, whichever is higher, and the participation of the directors by video conferencing or by other audio visual means shall also be counted for the purposes of quorum under this sub-section.*

(2) The continuing directors may act notwithstanding any vacancy in the Board; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, the continuing directors or director may act for the purpose of increasing the number



of directors to that fixed for the quorum, or of summoning a general meeting of the company and for no other purpose.

(3) *Where at any time the number of interested directors exceeds or is equal to two-thirds of the total strength of the Board of Directors, the number of directors who are not interested directors and present at the meeting, being not less than two, shall be the quorum during such time.*

Explanation.—For the purposes of this sub-section, “interested director” means a director within the meaning of sub-section (2) of section 184.

(4) *Where a meeting of the Board could not be held for want of quorum, then, unless the articles of the company otherwise provide, the meeting shall automatically stand adjourned to the same day at the same time and place in the next week or if that day is a national holiday, till the next succeeding day, which is not a national holiday, at the same time and place.”*

Section 174 (2) enables the continuing Directors to act notwithstanding any vacancy in the Board. Section 174(2) also says that Directors may act for the purposes of increasing the number of Directors fixed for quorum or for summoning a General Meeting of the Company. Therefore, 2nd Respondent is entitled to increase the number of Directors to the extent that is required for quorum or for summoning a General Meeting of the Company. In the Petition itself, Petitioner stated that 2nd Respondent decided to appoint Director by taking recourse to Section 174(2) vide Affidavit-cum-Declaration dated 25th January, 2017 given by 2nd Respondent to the Ministry of Corporate Affairs. Therefore, the contention of the Petitioner, that there is no valid Board to consider the requisition given by the Petitioner to convene Annual General Meeting under Section 100(2), is not sustainable. In fact, Petitioner did not choose to give valid

requisition under Section 100(2) to the Board of Directors to call for a requisition before filing this Petition. Without giving such requisition, Petitioner under a premise that there is no valid Board, rushed to this Tribunal.

13. Here, it is pertinent to mention that Petitioner previously, on 8.11.2016, i.e., after the death of Indravadan Shah gave a requisition to call for an EOGM, and on the basis of Notice dated 7.12.2016, EOGM dated 4.1.2017 was held for the purpose of appointment of Petitioner as Director of the Company. But ultimately, Petitioner admitted that the EOGM held on 4.1.2017 is not a valid EOGM and the Resolution passed therein, appointing the Petitioner as Director, is not a valid Resolution. It is also the case of the Petitioner that herself and her husband held a Board Meeting on 4.1.2017 appointing them as Authorised Signatories for operation of Bank accounts changing the existing Authorised Signatory of the 1st Respondent Company. The above said actions taken by the Petitioner and her husband goes to show that they wanted to take over the management of the Company by appointing the Petitioner as Director. But the Petitioner, after realising that 2nd Respondent ceased to be an Additional Director with effect from 30.9.2016 and the appointment of Petitioner as 'Director' is not valid, came forward with this Petition without making any bona fide attempt by giving a valid requisition under Section 100 sub-section (2) of the Companies Act to the Board. If really the Petitioner gave such a requisition, it would have necessitated the 2nd Respondent to act under Section 174(2) of the Companies Act. But without giving such requisition, Petitioner, on the assumption that there is no valid Board, filed this Petition seeking reliefs under Section 98 and therefore, the situation of "impracticability" has not arisen in this case.

14. Another plea of the Petitioner is that even if a valid Board is there and even if an EOGM is called, the only other shareholder, i.e., 2nd Respondent may not attend the EOGM and therefore there would not be a quorum. This again is a presumption. Suppose, if

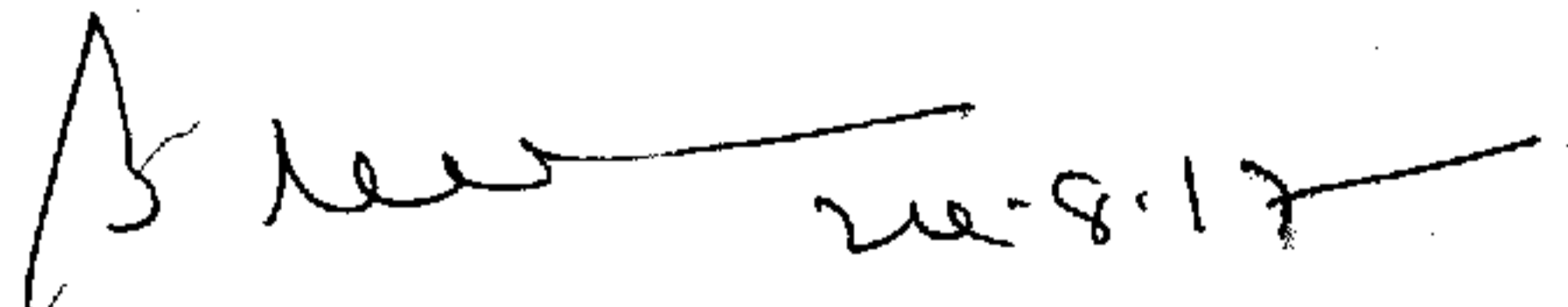
an EOGM is called to remove the 2nd Respondent as a Director, she would certainly attend. Therefore, the presumption of the Petitioner that 2nd Respondent would not attend the Meeting is not valid. Therefore, the situation of impracticability does not again arise in this case.

15. Moreover, the attempt of the Petitioner, without being appointed as a Director validly, by virtue of any illegal Meeting dated 4.1.2017 sought to brand herself as an Authorised Signatory along with her husband although ceased to be Director with effect from 30.9.2016, goes to show that Petitioner has not approached this Tribunal with clean hands. The timing of the Petition also go to show that after the 2nd Respondent gave Complaint to the Registrar of Companies, Petitioner thought of filing this Petition. Therefore, this is not a fit case to give a direction to call for an EOGM of the Company, that too for the purpose of appointing the Petitioner as 'Director' of the Company.

16. On this aspect, learned Counsel appearing for the Respondent No.2 relied upon the decision of the Company Law Board, Kolkata bench in the case of **Amrita Bazar Patrika (P.) Ltd., In re**, reported in **(2012) 28 taxmann.com 178 (CLB-Kol.)**. In that decision, it is clearly held that only when it is impracticable to hold the meeting, then the provisions of Section 186 of the Companies Act come into play and can be invoked.

17. In view of the above discussion, this Petition is dismissed. There is no order as to costs.

Signature:



Sri Bikki Raveendra Babu, Member (J).