

**BEFORE HON'BLE COMPANY LAW BOARD,**  
**ALLAHABAD BENCH**  
**COMPANY APPLICATION NO. OF 2015**  
**IN**  
**COMPANY PETITION NO. 49 (ND) OF 2014**  
**THE COMPANIES ACT, 1956-SECTIONS 397,398,402,403 AND/OR**  
**OTHER APPLICABLE PROVISINS OF THE COMPANIES ACT, 1956.**  
**IN THE MATTER OF**  
**MORADABAD CLUB PRIVATE LIMITED**  
**AND**  
**IN THE MATTER OF MR. SAURABH KAPOOR**  
**VERSUS**  
**M/S MORADABAD CLUB PRIVAITE LIMITED & OTHERS**  
**AND**  
**IN THE MATTER OF CA 90/2015**

REGISTRAR OF COMPANIES, UTTAR PRADESH,

KANPUR & OTHERS

..... APPLICANTS

(Respondent No.6 in main Company Petition)

VERSUS

1. Shri Saurabh Kapoor, Kapoor Motor Stores, Crossing Kapoor Company, Moradabad-244001-U.P. .... Non-applicant (Company petitioner)
2. M/s Moradabad Club Private Ltd. Having its registered office at Civil Lines, Moradabad-244001 (U.P.).
3. Mr. Amar Nath Kapoor, S/o Late Mr. Vasdev Lal Kapoor Crossing Kapoor Company, Moradabad- 244001-U.P.
4. Dr. Satish Kumar Raj, S/o Late Dr. Hans Raj, Court road, Moradabad- 244001-U.P.

Non-applicants (Respondents in Company Petition)

**Order**

(As per Harihar P. Chaturvedi, Member Judicial)

The case is fixed for orders in CA 90 of 2015. The applicant is the Registrar of Companies, U.P. Kanpur who has preferred this application under Section 44 of the Company Law Board Regulations, 1991 read with Order Rule 19 of Civil Procedure Code.

The present application was filed on behalf of the respondent No. 4, 5 and 6 in the main Company Petition with prayer to recall the order dated 03.12.2014 passed by the Company Law Board in CP No. 49 (ND) 2014. This Application has been filed on strength of an order dated 01.09.2015 of the High Court of Allahabad passed in Company Appeal No. 7 of 2015. The High Court while disposing of the Company Appeal preferred by the Central Government (through Secretary, Ministry of Corporate Affairs) was pleased to grant liberty to the applicants (Secretary, Govt. Of India, Ministry of Corporate Affairs, New Delhi) to move an appropriate application before the Company Law Board for recalling its order dated 03.12.2014 passed in the present matter, if such order was passed without notice to or hearing the applicants. Hence the present application.

We have examined the contents of the present application CA 90 of 2015, and the observations made by the High Court, in its order dated 01.09.2015 passed in Company Appeal No.7 of 2015. For convenience, the same is reproduced below:

*This appeal has been preferred under Section 10-F of the Companies Act, 1956 against the order dated 03.12.2014 passed by the Company Law Board, New Delhi in the matter of M/s Moradabad Club Private Limited, Moradabad having its registered office at Moradabad.*

*The main submission of Sri Ashok Mehta, Senior Advocate learned counsel for the appellants is that the impugned order has been passed without any notice or any opportunity of hearing to the petitioners and that the order itself reflects that the appellants were not heard before passing the same.*

*The above submission can be raised by the appellants before the Company Law Board by filing an application for recall of the above order on the above ground.*

*In view of the above, the appeal is dismissed at this stage with liberty to the appellants to move appropriate application for recall of the above order dated 03.12.2014, if the same has been passed without notice or hearing the appellants.*

It is the contention of the applicant in the CA that the respondents No. 4, 5 & 6 in company petition were impleaded as parties but no notice was received by them from the Company Law Board. After passing the order impugned the first time it came to the notice of ROC, Kanpur, who is answering respondent No.6 in the main Company Petition. when Mr.Saurabh Kapoor (Company Petitioner) filed an application before his office annexing the order and requested to convert the Company into a Public Limited Company pursuant to the direction issued by the Principal Bench of Company Law Board, New Delhi.

The office of the ROC, Kanpur has contended that the direction issued by the Hon'ble Company Law Board, New Delhi cannot be complied with for the reasons stated in para 7 to 14 of the CA. The procedural difficulties which are being faced by the ROC, Kanpur for implementation of the order of the Company Law Board are stated in Para 12 to 14 of the present one application wherein it is pointed that a full-fledged investigation was carried by his office against M/s Moradabad Club Private Limited pursuant to an order dated 20.09.2012 passed in W.P. No. 43/2012 by the Allahabad High Court.

As per the investigation report, the Moradabad Club Pvt Ltd does not have shareholders nor full owners of the shares or the beneficial owners of the share since its inception it stood as a Private Limited Company by guarantee, because no share certificates were issued to its member. In full-fledged inspection of the company carried under Section 209 of the Companies Act, 1956, various violation of the Companies Act were noticed.

Accordingly complaints have been filed by the ROC Kanpur before the appropriate Court of Law which are pending investigation under Section 247 of the Companies Act 1956 with regard to ownership of Company has been conducted by the ROC, Kanpur.

The petitioner further states that the order impugned is misconceived and contrary to the provisions of law because the minimum paid capital then prescribed for registration of a Public Limited Company was **Rs. 5 lakhs** under Section 3 (IV) of the Companies Act, while the present company was having share capital of **Rs. 1 lakhs** only, that is by way of symbolic shares issued, because no member of the club has subscribed for shares. Hence such change is not in conformity with the Companies Act and could not be implemented.

It is a matter of record that the office of Registrar of Companies, Kanpur earlier preferred an appeal on behalf of the Secretary, Ministry of Corporate Affairs against the order/direction dated 03.12.2014 issued by the CLB, before the Allahabad High Court but it did not entertain the appeal as defective, but pleased to grant liberty to the petitioner to move an appropriate application before the Company Law Board for recall of the impugned order in case it is found that order dated 03.12.2014 was passed without issuing notices to and hearing of the respondent No. 4 to 6.

This may be noted that in the present matter the respondent No.4 to 6 are named as the Secretary, Ministry of Corporate Affairs, New Delhi, Regional Director, Northern Region, Noida and the ROC, Kanpur respectively. It may be seen that petitioner Ministry of Corporate Affairs in the present CA has raised some debateable issue for implementation of the order impugned. As per the petitioner the order cannot be implemented in view of relevant the statutory provisions under the Companies Act, 1956 & 2013.

We have carefully considered the above stated contentions. We are of the view that order passed by the Learned Single Member of the Company Law Board, New Delhi needs reconsideration on this issue as to whether the respondent no.6 to 8 were issued a notice and properly served by the Company Law Board in respect of hearing in Company Petition No. 49(ND)2014.

It is apparent from the order that the CLB has recorded presence of the counsel for the respondent No. 1 and 3 alone who were represented by Advocates Shri Pradeep Kapoor and Shri S.M. Naqvi, for the petitioner side and Shri R.C. Bhatia for PCS for respondent No. 1 to 3 while no counsel was present on the date of hearing i.e. 26<sup>th</sup> August, 2014. This is a question of fact and shall be determined after hearing both the parties and by making a thorough scrutiny of the record of the case received from the office of the Company Law Board, New Delhi and made over to this Bench.


In view of the above stated reasons, the present application is partly succeeds and is allowed for a fresh hearing in respect of the order dated 03.12.2014 passed by Ld. Single Member of the Hon'ble Company Law Board, New Delhi. After hearing the submission of both the parties this Bench would determine, whether order impugned needs to be recalled, modified or rectified by this Tribunal.

The CA is disposed of accordingly No order as to cost.

Consequently, the matter be listed on 11.01.2017 for hearing.

List on 11.01.2017.

 06.12.16  
SH. V. S. R. AVADHANI (Judicial Member)

  
SH. H. P. CHATURVEDI (Judicial Member)

Dated 06.12.2016