BEFORE THE NATIONAL COMPANY LAW TRIBUNAL AHMEDABAD BENCH, AHMEDABAD COMPANY PETIITION NO. 1/167/NCLT/AHM/2016

CORAM:			RI M. K. SHRAWA' 1BER (JUDICIAL)
In the matter of Sections 167 of the Companies Act, 1956.			
Shri Pawan Kumar Gupta, M-80, Someshwara Enclave, UdhanaMagdalla Road, Vesu, Surat 395 007.			Petitioner
M/s. Savitri Textiles (India) Pvt. Ltd., a Company incorporated under the Companies Act, 1956 and having its Registered office at Plot No.407, Road No.4,GIDC, Sachin, Surat 394 220.			Respondent

PRESENT ON BEHALF OF THE PARTIES:

FOR THE PETITIONER

Mr. S. Suriyanarayanan, Advocate.

FOR THE RESPONDENT

Mr. S. Suriyanarayanan, Advocate.

ORDER

Reserved on : 09.12.2016 Pronounced on : 20/01/2017

1. At the outset, it is worth to mention that Ld. Advocate Mr. S. Suriyanarayanan appeared and stated that in a situation when the disputes among the parties have already settled, then the only issue of

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holding of Annual General Meeting can be decided under the provisions of Section 96 of the Companies Act, 2013 and he may be allowed to represent both the sides. He has also clarified that none of the parties shall be prejudiced by his representation.

- 2. Date sheets, as maintained on each date of hearing, have also reflected that the Ld. Advocate has represented both the sides.
- 3. Facts of the case have revealed that the Respondent No.1 Company was incorporated on 22nd January, 2011 having its registered office at Surat, Gujarat. The Petitioner was holding 20,000 shares of the Respondent No.1 Company and also one of the Directors of the Respondent No.1 Company. The Other Director of the Respondent No.1 Company was Mr. Chandrashekhar Gupta, who has resigned on 24th June, 2016. The Respondent No.1 Company thereafter has appointed Shri Shyamsundar Gupta (father of the Petitioner) and Shri Naman Gupta (son of the Petitioner) as additional Directors. Because of the dispute among the Directors, the audit as well as the Annual General Meeting could not be conducted during the period 2015. Now the prayer is that in a situation when one of the Directors, who was in disagreement with the rest of the Directors has already resigned, then this matter of holding of Annual General Meeting can be decided without further delay.
- 4. The facts of the case as per the Petition under consideration are reproduced verbatim for ready reference as under:-

"FACTS OF THE CASE

(i) Under Section of the Companies Act, 2013 (corresponding Section 166(1) of the Companies Act, 1956), the Respondent Company is required to hold its Annual General Meeting every year and within fifteen months from the date of the last Annual General Meeting of the Company. The

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Respondent Company held its last Annual General Meeting on 30th September, 2014 and as per the requirement of the aforesaid provisions of the Act, the Respondent Company should have held its Annual General Meeting on or before 30th September, 2015. But to the best of information of the Petitioner, till date the Respondent Company has not held any Annual General Meeting for the year 2015 although fifteen months have elapsed on 30th December, 2015 computed from the date of the last Annual General Meeting held on 30th September, 2014.

- (ii) Under Section 167(1) of the Companies Act, 1956, National Company Law Tribunal, on the application of any member of the Company can call or direct calling of an Annual General Meeting of the Company, if default is made in holding an Annual General Meeting in accordance with Section 166 of the Companies Act, 1956.
- There were two Directors of the Company namely Shri Pawan Kumar Gupta and Shri Chandrashekhar Gupta since the date of incorporation of the Company. A Company Petition No. 83(MP)/2015 was filed by Shri Chandrashekhar Gupta before the Company Law Board which came to be dismissed by the Company Law Board vide Order dated 11th December, 2015. Against the Order of the Company Law Board, O.J. Appeal No.57 of 2015 was filed by Shri Chandrashekhar Gupta, Director and brother of the Petitioner herein. Shri Shyamsundar Gupta, father of Shri Pawan Kumar Gupta and Shri Naman Gupta, son of Shri Pawan Kumar Gupta were appointed as additional Directors of the Respondent Company on 24th November, 2015. The Order dated 7th January, 2016 of the Hon'ble high Court of Gujarat held that "the dispute is essentially between two brothers representing the respective shares. Hence, considering the facts and circumstances, it would be just and proper if the matter is placed before the mediation centre where the attempt should be made to resolve the dispute amicably for all time to come." The Petitioner and his brother met under the auspices of mediation centre for settlement of their dispute and Shri Chandrashekhar Gupta agreed to withdraw the O.J. Appeal. However, it is seen that the said O.J. Appeal is still pending before the Hon'ble High Court of Gujarat. Because of the disputes about audit of accounts, etc. raised by then Director Shri Chandrashekhar Gupta and pending Company Petition and subsequent O.J.

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- Appeal, the Annual General Meeting for 2015 could not be convened and held as per time limits.
- (iv) Because of hurdles by the erstwhile Director Shri Chandrashekhar Gupta, audit could not be conducted and AGM during 2015 could not be held. Shri Chandrashekhar Gupta has since resigned from directorship of Respondent Company on 28th June, 2016in terms of settlement entered between the Applicant and said Shri Chandrashekhar Gupta.
- (v) The Petitioner being aggrieved, has no other option but to make this Application to this Tribunal for interference under Section 167 of the Companies Act, 1956.
- (vi) The Petitioner is making this Application by way of Petition to obtain an Order from this Tribunal calling or directing the calling of an Annual General Meeting of the Respondent Company for the year 2015."
- 5. The records of the case have revealed that there is an Order of the Hon'ble Gujarat High Court titled as Chandrashekhar Gupta V/s Savitri Textiles (India) Pvt. Ltd. dated 29th August, 2016 wherein it was recorded that a settlement is arrived at between the parties. The records of the case have also demonstrated that vide a letter dated 24th June, 2016 Shri Chandrashekhar Gupta has voluntarily resigned as a Director of M/s. Savitri Textiles (India) Pvt. Ltd. w.e.f. 28th June, 2016.
- 6. As per the provisions of **Section 97 of Companies Act**, the Tribunal is enshrined with the power to call the Annual General Meeting. For ready reference, the said provision is reproduced here below:-.

"Power of Tribunal to call annual general meeting.

97. (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:

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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."

On due consideration of totality of the facts and circumstances of

the case, in the light of the provisions of the Companies Act, 2013 as also

the submissions made by the Ld. Representative, I hereby consider that

this is a fit case to exercise the powers conferred u/s 97 of the Companies

Act, 2013. It is hereby directed that the Annual General Meeting should

now be held within 30 days on receipt of this Order as prescribed under

the Statute. A compliance report thereafter should also be submitted to

the concerned RoC. It is paramount as well as the intension of the

Companies Act to protect the functioning as well as the interest of the

Company. Therefore, it is always desirable to convene and call all the

meetings as prescribed under the Act so that the Company should not

infringe the provisions of the Act or to be treated in default. Holding of

AGM is a statutory obligation. Keeping this basic principal in mine, this

Petition is hereby disposed of with the directions supra. No Order as to

costs.

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Dated: 20th January 2017

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M.K. Shrawat Member (Judicial)

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