

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No.73 of 2018

[Arising out of Order dated 20.12.2017 passed by National Company Law Tribunal, Chandigarh Bench in C.P. No.271/CHD/PB/2017]

IN THE MATTER OF:

Ramprasad Dalmia
853, Marshal House,
33/1, Netaji Subhas Road,
Kolkata – 700 001

Presently at
Flat No.2A1, Asha Apartment 93,
Deshpran Sasmal Road,
Kolkata – 700 033

...Appellant

Versus

1. The Board of Directors
Milkfood Limited
Bahadurgarh – 147 021,
Distt. Paiala (Punjab)
2. Mrs. Asha Gadi,
F73, Kalkaji,
New Delhi – 110019
3. Mr. Amarjeet Kapoor,
G-16, Lajpat Nagar – 111,
New Delhi – 110024
4. Ms. Gita Bawa,
S-264 Greater Kailash,
Pat – 11, New Delhi – 110048
5. Mr. Sudhir Avasthi
House No.35, Kailash Colony,
New Delhi – 110048

...Respondents

Present: Shri Abhijeet Sinha, Shri Kumarjit Banerjee, Ms. Pratiksha Sharma, Shri Ankit Acharya, Ms. Jyoti Singh and Shri Aditya Shukla, Advocates for the Appellant

Shri Vikas Mishra, Shri Shaleen Srivastava, Shri Shashwat Tripathi and Ms. Malini Sud, Advocates for the Respondents

J U D G E M E N T

A.I.S. Cheema, J. :

1. This Appeal has been filed by the Appellant – Ramprasad Dalmia being aggrieved by the dismissal of his Company Petition No.271/CHD/PB/217 vide Impugned Order dated 20th December, 2017 passed by National Company Law Tribunal, Chandigarh Bench (‘NCLT’, in short). The Company Petition was filed relying on Sections 96-98, 101-102, 107 read with Sections 118 and 121 of the Companies Act, 2013 (‘new Act’, in short) questioning the manner in which Respondents held Annual General Meeting dated 26.09.2017 of the Company Respondent No.1.

2. With the Appeal, copy of Company Petition is filed at Annexure – A4. We refer in brief to the contents of the Company Petition to see what is the case of the Appellant, in short.

2.1 The Company Petition mentions that Respondent No.1 is a public limited company. Reference is made to the objects of the Respondent No.1 Company and its share capital. Respondent Nos.2 to 5 are stated to be the Directors of Respondent No.1 Company (hereafter referred to as ‘Company’). The Appellant claims that he is holding 105 equity shares of the Company in dematerialized account. It is stated that the 44th Annual

General Meeting of the shareholders was called to be held on 26th September, 2017. A Notice of the AGM had been issued with Agenda along with proposed resolutions. In para - V of the Company Petition, the Appellant set out the Agenda items, drawing them from copy of the Notice which had been sent.

2.2 The Appellant claimed that he is of advanced age and residing at Kolkata and he proposed to participate in the AGM through his representative. In furtherance of the same, the proxy of such representative was duly filed with the Company notifying that the Petitioner shall participate in the aforementioned AGM through his representative. The Appellant claimed in the Company Petition that on the designated date, the Appellant was duly present at the Company's registered office to participate in the AGM "through its representative". The Company Petition then makes certain grievances regarding the meeting. They can be said to be as follows:-

A. The Board of Directors of the Company were not present at the venue;

B. Stipulated procedure for convening AGM was given an absolute go by. Usual convention followed in adopting a resolution by show of hands by the requisite majority of the shareholders present and voting was also not followed;

C. The Resolutions were simpliciter adopted by one Mr. Rajesh Thakur, the concerned Company Secretary of the Company, without putting the same to vote to the shareholders present and voting;

D. Consequently, upon the objection of the Petitioner and certain other shareholders present in the AGM, the Petitioner as also the shareholders were threatened with dire consequences if they do not accede to the manner in which the AGM was being conducted;

2.3 The Appellant lodged his protest through his proxy regarding the manner in which the said AGM was conducted, against the Act and Rules and Articles of Association. That, the conducting of the meeting was in violation of mandatory statutory provisions and decisions taken are non-est;

2.4 That, the report of the AGM was filed by the Company with Bombay Stock Exchange but it does not reflect the actual business transacted at the AGM. That, one Sudhir Avasthi, CEO was not present in the meeting but in the Report he was incorrectly and falsely shown as special invitee. (The Appellant filed copy of the Report along with Petition);

2.5 The Petition prayed to declare the AGM non-est and/or void ab-initio; also that the resolutions taken were void as AGM was held violating procedural norms and rules; another prayer is - to direct convening of AGM.

3. The Company Petition has been signed and verified by the Appellant. With the Company Petition, an Affidavit was filed (Appeal Page – 89) as if the authorized representative of the Petitioner (Appellant) was swearing it but the Appellant himself appears to have signed the Affidavit.

4. The Company Petition as above was heard at preliminary stage itself by the learned NCLT. NCLT referred to the pleadings and prayers made in the Petition and also the arguments. The NCLT with reference to Section 96 of the new Act which relates to requirement of each year holding of Annual General Meeting, observed:-

“13. The only requirement of Section 96 of the Act is holding of AGM of the company each year, which has been complied with. The manner in which the meeting has been conducted cannot be raised as a question before the Tribunal. It is simply alleged in the petition that the petitioner was present through his representative and certain other shareholders present also raised objection, but the name of any such person, has not been mentioned. The petitioner has not disclosed the name of his representative present in meeting nor any affidavit of the said representative to support this allegation. The petitioner has also stated that shareholders were threatened by the management at the time of voting, but it is not the case of the petitioner that any complaint with the concerned police station was lodged to support this assertion.”

4.1 NCLT then reproduced Section 97 of the new Act which relates to the powers of the Tribunal to call Annual General Meeting. Then it was observed in para – 15 of the Impugned Order as under:-

“15. Section 107 of the Act, which the learned counsel for the Petitioner also referred pertains to the

voting by show of hands unless a poll is demanded under Section 109 of the Act. The record of the case as filed with petition shows that in respect of 44th AGM Annexure P-4 the number of the members present in the meeting was 25 and 8 were present through proxy. Based on the scrutinizers' reports, certain resolutions were passed except item No.2 relating to re-appointment of Amarjeet Kapoor as director in view of the disqualification incurred by him under Section 167(2) of the Act as notified by the Ministry of Corporate Affairs on 18th September, 2017. For that reason, said agenda item was withdrawn.”

4.2 Annexure – A-3 in the Appeal is letter dated 27th September, 2017 sent by the Respondent Company to Department of Corporate Services, BSE along with the Report on 44th Annual General Meeting of the Company. The document records particulars as above regarding members present in person or through proxy and other details of the holding of the meeting and resolutions.

4.3 The Impugned Order shows that after considering such documents, the NCLT proceeded to consider Sections 241 and 244 to observe that the acts alleged as of non-compliance of provisions may be amounting to offence or act of oppression and mismanagement. With regard to oppression and mismanagement, the view of the NCLT, appears to be that no case of exemption had been made out by the Petitioner – Appellant. NCLT observed that the Appellant had devised a way of coming to NCLT by claiming the petition to be under Sections 96, 98 and the other Sections as mentioned. The NCLT went on to dismiss the Petition with costs of Rs.50,000/-.

5. The present Appeal is filed by the Appellant and claims that he had shown in the petition filed that there was non-compliance of relevant provisions in the holding of AGM. It is claimed that the Appellant was present in the AGM through his representative but the Board of Directors were not present. It is claimed that the report sent by the Respondent Company to Bombay Stock Exchange did not correctly reflect the business transacted in the AGM. That, it falsely showed that Sudhir Avasthi, CEO was present as special invitee although he was not present.

6. Although the Respondents were not even issued Notice in the NCLT, we had issued Notice of the Appeal and counsel for both sides have been heard. The Respondents have only made written submission in defence in the Appeal. In the Impugned Order, NCLT had as one of the observations mentioned that the Appellant had not even appended with the Report, copy of the Form No. MGT – 15 as per Rules. As this was a document, which the Respondents were supposed to submit to ROC, in the Appeal we had asked the counsel for Respondents and the Respondents have put on record copy of MGT – 15 with Diary No.6055. One of the other observations of NCLT was that the Appellant did not show as to what is the role of Respondents 2 to 4, in the petition. The Company Petition did state that Respondents 2 to 4 were Directors of Respondent No.1. However, this factual error of NCLT is not very material.

7. Coming to the arguments, the counsel for the Appellant submits that every Company, other than one person Company is liable to hold, each year a general meeting as provided in Section 96. It is argued that if there is any default made in holding the AGM under Section 96, the Tribunal can direct holding of the AGM under Section 97. The stress of the argument of the counsel for the Appellant is that earlier under Section 167 of the Companies Act, 1956 power vested with the Central Government to direct holding of the AGM, in case of default, which was an administrative power, but now with the new Act, the power is vested with NCLT which is a judicial body and the power under Section 97 is wider. It is argued that if the present Section 97 of the new Act is compared with Section 167 of the old Act, there are important changes.

7.1 Section 97 of the new Act may be juxtaposed with Section 167 of the old Act as under, as both sides have referred to them:-

<i>Section 97 of the Act</i>	<i>Section 167 of the Companies Act, 1956</i>
97. <u>Power of Tribunal to call annual general meeting.—</u>	167. <u>Power of Central Government to call annual general meeting.</u>
(1) <u>If any default is made in holding the annual general meeting of a company under section 96, the Tribunal may,</u> notwithstanding anything contained in this Act or the articles of the company, on the application of any	(1) <u>If default is made in holding an annual general meeting in accordance with section 166, the Central Government may,</u> notwithstanding anything in this Act or in the articles of the company, on the

<p>member of the company, <u>call, or direct the calling of, an annual general meeting of the company</u> and give such ancillary or consequential directions as the Tribunal thinks expedient:</p>	<p>application of any member of the company, <u>call, or direct the calling of, a general meeting of the company</u> and give such ancillary or consequential directions as the Central Government thinks expedient in relation to the calling, holding and conducting of the meeting.</p>
<p>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.</p>	<p>Explanation.- The directions that may be given under this subsection may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.</p>
<p>(2) A general meeting held in pursuance of subsection (1) shall, subject to any directions of the Tribunal, be deemed to be an annual general meeting of the company under this Act.</p>	<p>(2) A general meeting held in pursuance of subsection (1) shall, subject to any directions of the Central Government be deemed to be an annual general meeting of the company.</p>
	<p>Provided that in the case of revival and rehabilitation of sick industrial companies under Chapter VIA, the provisions of this section shall have effect as of for the words “Central Government”, the word “Tribunal” had been substituted.</p>

7.2 Counsel for the Appellant referring to Sub-Section (1) of Section 97 is submitting that the placing of the word “any” in the opening portion

of sub-section makes it clear that any default regarding holding of AGM would include not merely the time of holding but also manner of holding the AGM. Referring to the difference in languages of the new and old provisions, it has been argued that as Section 97 now makes it possible for any member to move NCLT and the Appellant had the right to move NCLT regarding the manner in which the meeting had been held. The submission is that there was an obligation to hold the AGM under Section 96 in accordance with the provisions of the Acts and Rules. If the mandatory compliances of the procedure are not followed, the entire object of holding AGM would be rendered nugatory, it is stated. The shareholders can exercise control over the affairs of Company only through General Meetings. Non-compliance of the provisions of Section 96, 97 and 98 are punishable under Section 99. Material irregularity/illegality in the manner of holding AGM should be held as “default” within the meaning of Section 97, it is argued.

7.3 Against this, the learned counsel for the Respondents read out the various Sections quoted in the Company Petition to state that most of the Sections were not at all relevant for the Company Petition and if the prayers are seen, the petition was basically under Section 97. It is argued that there is no dispute regarding the fact that AGM indeed was held on 26.09.2017. The counsel submitted that the Petitioner only has 105 shares in the Company. The issued share capital of the Company is more than 48 Lakhs and thus according to the counsel, the Appellant could not have

maintained the petition under Sections 241, 242 and devised a way of coming to NCLT by resorting to Sections 96 and 97 of the new Act. The Company duly filed MGT – 15, copy of which has been put on record and according to the counsel, the Report submitted to Bombay Stock Exchange gives particulars regarding the developments which took place at the time of meeting. The counsel referred to Section 121 of the new Act which reads as under:-

“121. Report on annual general meeting.— (1) Every listed public company shall prepare in the prescribed manner a report on each annual general meeting including the confirmation to the effect that the meeting was convened, held and conducted as per the provisions of this Act and the rules made thereunder.

(2) The company shall file with the Registrar a copy of the report referred to in subsection (1) within thirty days of the conclusion of the annual general meeting with such fees as may be prescribed, or with such additional fees as may be prescribed, within the time as specified, under section 403.

(3) If the company fails to file the report under sub-section (2) before the expiry of the period specified under section 403 with additional [fees], the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.”

7.4 Reference was then made to Rule 31 of the Companies (Management and Administration) Rules, 2014 which requires the Company to report particular details as mentioned in the Rule, with reference to the meeting and there is prescribed form MGT – 15 to be

submitted as per Sub-Rule (2). The counsel submitted that the Company complied with Section 121 and gave particulars in the prescribed format and did not make any default in the form. It is stated that, even if it was to be said that there was any default, Rule 30 provides for penalty and it cannot be claimed that the meeting itself was not held or that holding the meeting would get vitiated. Counsel for Respondents submitted that Section 96 makes it obligatory on the Company to hold each year Annual General Meeting as provided in the Section and if there is default in holding the meeting, Section 99 prescribed punishment of which the Company would be liable. Referring to Section 97, it has been argued that the slight change in the opening wordings of new Section 97 viz-a-viz old Section 167 has not changed in fact and effect the meaning of the Section. It still relates to the requirement to conduct AGM each year. The argument is that the default relates to failure in holding the meeting in the time prescribed by Section 96. The counsel stated that the words "any default" do not mean that in Section 97, manner of holding also can be imparted as that is not the intention of the legislature. The counsel stated that it is not that the shareholders are without a remedy. If required number of shareholders are there, they may resort to Section 241 and 242 of the new Act to claim oppression. It is argued if the request of such individual member is accepted to go into the manner of holding Annual General Meeting, there will be no end to such requests. It is further argued that the Company Petition is totally vague and the Appellant had himself not attended it and seen and there are no details as to who was his proxy or authorized

representative and who are other persons who were allegedly threatened, etc.

7.5 Both side counsel referred to some Rulings to support their submissions.

8. Parties have raised legal question whether Under Section 97 of the new Act, the words “any default” used should be restricted only to fault in conducting the meeting each year or the words also include the manner in which the AGM is held. Although the question is raised, in the facts of the matter, we are not entering into this question in this case to record our opinion on the issue. In present matter, it is not necessary for us to deal with the question. The reason is that when we have gone through the Company Petition and record and heard the parties, it is apparent on the face of record that the Appellant admittedly himself did not attend the said AGM. He claims that he had sent his authorized representative. Thus whatever allegations the Appellant is making regarding non-compliance or procedural irregularities in the AGM, is based on the hearsay from said “authorized representative” whose name also is not disclosed. Although the Company Petition claimed that there were other shareholders also who raised objections in the AGM, no particulars of any such shareholders are disclosed. Although it is alleged that the Petitioner (admittedly he was not personally present) and other shareholders were threatened with dire consequences, no particulars of alleged threats are available. Although the

Appellant claimed that the Appellant had duly lodged his protest through his proxy regarding the manner in which AGM was being held, no documents or details have been brought on record. A copy of the report filed after the meeting with Bombay Stock Exchange is already available on record. The follow up action required to be taken by the Company submitting form MGT – 15 is also available. Considering these documents on record when the petition is perused, it must be said that no material to make out a case is there to spell out cause of action and no prima facie case is made out for the various allegations. The Petitioner himself was not witness to the happenings in the meeting and no Affidavits or any other proof is filed of his alleged authorized representative or proxy, or anybody else. When no supportive material is available to make out cause of action or prima facie case, it is not necessary to go into roving inquiry into the manner in which the AGM was conducted. As such the arguments raised by the Appellant on the legal question relating to interpretation of Section 97 needs no discussion in the present case, as Appellant failed to cross the first hurdle itself to make out case invoking jurisdiction. Although the Appellant failed to make out a cause of action or prima facie case, the NCLT still considered his grievances and found it fit to dismiss the Petition at the preliminary stage itself. We do not find any reason to interfere.

9. The Company Petition is dismissed. Impugned Order is maintained. No orders as to costs.

[Justice A.I.S. Cheema]
Member (Judicial)

[Balvinder Singh]
Member (Technical)

New Delhi

19th September, 2018

/rs/nn