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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 10172/2018**

ROSHANARA CLUB LIMITED

..... Petitioner

Through: Mr Krishnendu Datta, Mr Rohit Goel,
Mr Ankur Garg, Mr Siddharth
Sharma and Ms Shruti Arora,
Advocates.

versus

REGISTRAR OF COMPANIES, DELHI

..... Respondent

Through: Mr Vikram Jetly, CGSC for
respondent/ROC

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **26.09.2018**

CM No. 39644/2018

1. Allowed, subject to all just exceptions.

W.P.(C) 10172/2018 & CM No.39643/2018

2. Issue notice. The learned counsel appearing for the respondent accepts notice.

3. The petitioner has filed the present petition, impugning an order dated 04.09.2018 (hereafter 'the impugned order'), whereby its application for permission to hold Annual General Meeting (AGM) beyond the time as stipulated in the Companies Act, 2013, has been rejected by the respondent (Registrar of Companies). Admittedly, in terms of the statutory provisions,

the petitioner is required to hold the AGM for the financial year ended 31.03.2018 on or before 30.09.2018.

4. On 25.08.2018, the petitioner filed an application, *inter alia*, requesting extension of time for a further period of three months for holding the AGM. The only reasons mentioned in the said application in support of the request are (a) that the petitioner is a non-profit organisation and is a company limited by guarantee having no share capital; (b) that the land of the company was on lease for 90 years, which has expired this year and the Directors of the petitioner company are in constant contact with the Ministry of Urban Development and DDA for extension/renewal of the lease and any change in the Board of Directors would result in the disruption of the “ground work already done”; and (c) that the company has recently change its software for accounting/financial data.

5. The Registrar of Companies (ROC) had considered the aforesaid application and has rejected the same. The ROC, by way of the impugned order, had held that the purpose of the application is to defer the election as well appointment of Directors, and extension of time for the said purpose cannot be granted.

6. This Court finds no infirmity with the aforesaid decision.

7. Mr Datta, learned counsel appearing for the petitioner submitted that after the petitioner had filed the application, the petitioner filed yet another application stating that its accounts were not ready as the forensic audit report has indicated certain adverse findings. He submitted that the effect of the said findings is yet to incorporated in the final accounts of the petitioner company. This contention is unmerited as well. First of all, no such reason

had been indicated in the application as initially filed and this appears to be an afterthought.

8. Secondly, in the application as initially filed, the petitioner had stated that it had changed its accounting software and was facing certain difficulties. This does indicate that there was no difficulty in making the accounts. The only glitch was the teething problem with the software. Thirdly, the fact that the forensic audit had been conducted is no ground for deferring the AGM. The petitioner would be obliged to hold AGM and present the accounts, as available, with the full disclosures. If the finding of the forensic report has not been incorporated in the final accounts due to paucity of time, the petitioner is required to disclose the same at the AGM as well as any other material having a bearing on the accuracy of the accounts. But the AGM cannot be deferred.

9. In view of the above, this Court finds no reason to interfere with the impugned order.

10. Mr Dutta states that even if the petitioner now calls for AGM, the same cannot held before 30.09.2018 taking into account that at least a twenty-one day prior notice is required. In this regard, it is observed that it will be open for the petitioner to immediately take steps for holding of the AGM. Needless to state that notwithstanding the petitioner doing so, the petitioner would be liable for all penalties and consequences for not holding AGM within the stipulated period.

11. A member of the petitioner company has also filed a petition before the National Company Law Tribunal (NCLT), which this Court is informed is pending. In this regard, it is clarified that nothing stated in this petition

shall prejudice or influence the said proceedings.

12. The petition is dismissed with the aforesaid observations. The pending application stands disposed of.

13. Order *dasti*.

VIBHU BAKHRU, J

SEPTEMBER 26, 2018
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