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

% ***Date of decision: 24th December, 2024***

\+ **W.P.(C) 18019/2024 & CM APPL. 76634/2024**

SANJIV CHOUDHARY

S/o Rajpal Choudhary,
R/o H-13/341, Paschim Vihar,
New Delhi-110087 .....Petitioner

Through: Mr. Prateek Kumar & Ms. Ankita, Advocates.

versus

1. **UNION OF INDIA**

Ministry of Corporate Affairs,
Through its Secretary,
Shastri Bhawan,
New Delhi-110001 .....Respondent No. 1

2. **REGISTAR OF COMPANY**

Registrar of Companies,
4th Floor, IFCL Tower,
61, Nehru Place,
New Delhi-110019 .....Respondent No. 2

3. **M/S ROSHANARA CLUB LIMITED**

Through its President,
Mr. Manish Aggarwal,
7792-95, Roshara Road,
Roshnara Garden,
Delhi-110007 .....Respondent No. 3

Through: Mr. Rakesh Kumar, CGSC, Mr. Ravinder, GP & Mr. Sunil, Advocate for R-1 & 2.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T ***(oral)***

CM APPL. 76633/2024 *(Exemption)*

1. Allowed, subject to all just exceptions.

2. The Application is disposed of.

W.P.(C) 18019/2024

3. The present Petition under *Article 226 of the Constitution of India, 1950* has been filed on behalf of the Writ Petitioner seeking the following reliefs:-

> *"a. To issue a writ of mandamus and/or Quo Warranto or any other writ in the nature of mandamus and/or Quo Warranto for directions for Respondent No. 2 for holding the Respondent No. 3 liable for default in holding the Annual General Meeting;*
>
> *b. To hold Annual General Meeting immediately in accordance with rules governing the same."*

4. *Learned counsel on behalf of the Petitioner* has submitted that Respondent No.3-M/s Roshnara Club Ltd. is duly constituted under the Companies Act, 1956. Petitioner is a member of the Respondent No.3 Club and has substantial interest in the affairs and businesses of the Club. He was also an erstwhile Committee member. At present, the affairs of the Club are being investigated by Respondent No.1-Union of India and Respondent No.2-Registrar of Company and they are supervising its affairs.

5. The Annual Report and Accounts for the period 01.04.2018 to 31.03.2019 have categorically highlighted the issues concerning malpractices, corruption and scams in the Annual Report and Accounts under the Heading "*Emphasis of the Matter,*" issued by D.G and Company

Chartered Accountant.

6. The DDA sent several Notices of the Lease getting expired, but it was ignored by the Respondents, leading to the sealing of the premises of the Club by DDA on 29.09.2023. As on date, the Respondent No.3 stands sealed by DDA and is pending further actions to be taken thereof.

7. The Petitioner has asserted that in terms of *Article 44 of the Article of Association* of Respondent No.3, election for Managing Committee is required to be conducted in the AGM where the previous Managing Committee retires. The 102nd Annual General Meeting *(hereinafter referred to as* "AGM"*)* of Respondent No.3/Club was scheduled for 29.09.2023, in which the election for the new Managing Committee was to take place as the term of the earlier Managing Committee had expired. However, the Annual Meeting was never conducted because of the sealing of the Club by Delhi Development Authority *(hereinafter referred to as* "DDA"*)*. It is asserted that even thereafter, no efforts have been made by the Respondents to conduct the AGM, not even virtually. The Managing Committee is continuing to function, even though it is *functus officio*.

8. The Petitioner has further claimed that the Managing Committee and its Directors are misusing their position of power and their access to Respondent No.3, to support their corrupt and personal gain practices. The Ministry of Corporate Affairs conducted an investigation of the Books and Papers of the Respondent Company under *Section 206(5) of the Companies Act, 2013* and Preliminary Report dated 22.12.2022 was submitted confirming the corrupt malpractices of the Respondent Club and of the Managing Committee and its Directors. The Forensic Audit Report and the

Annual Report further confirms the malpractices and corruptions in the affairs of day-to-day business of Respondent No.3.

9. The Petitioner has further explained that he had filed a Petition before the National Company Law Tribunal (NCLT) for Prevention of Oppression and Mismanagement by Respondent No.3; amongst the number of other interim prayers, one of the prayer was to hold the Respondent No.3 liable for default in holding the Annual General Meeting and to be punished with appropriate fine, but the Petition has been dismissed for not meeting the criteria for waiving off the requirement under *Clauses (a) and (b) of Section 244(1) of the Companies Act, 2013.* The Petitioner is therefore, left with no other equally efficacious alternative remedy and has filed the present Writ Petition.

10. The Petitioner has placed reliance on *Siddharth Sahib Singh vs. Apex Council of DDCA*, *W.P(C) 8634/2023* dated 10th July, 2023 wherein the Coordinate Bench of this Court observed that *though Section 244(1)(b) of the Companies Act, 2013* provides that an Application under *Section 241 of the Companies Act* can be entertained only if it is supported by 1/5th of the total number of members of the Company, but the NCLT has the power to waive this requirement. If the Petitioner has approached NCLT and the NCLT refuses to waive off the stipulated requirement of support of 1/5th members of the Company, then it would be open for the Petitioner to approach this Court by contending that no equally efficacious alternative remedy is left to him. If the Court does not exercise its jurisdiction under Article 226 of the Constitution of India, an irreversible damage would be caused to the Company.

11. The Petitioner has thus, asserted that he has no other alternate efficacious remedy but to approach this Court under the Writ jurisdiction.

12. ***The learned counsel on behalf of the Respondent Nos. 1 & 2 had appeared on Advance Notice.*** It was vehemently contended that *Section 97 of the Companies Act, 2013* provides that if there is any default in holding of AGM of a Company under *Section 96,* the Tribunal may, notwithstanding anything contained in the Act or the Articles of the Company, on an Application of any member of the Company, call or direct the calling of Annual General Meeting of the Company and give such ancillary or consequential directions as the Tribunal thinks fit.

13. Learned counsel has further contended that the appropriate remedy for the Petitioner once the matter has been dismissed by NCLT, was by way of an Appeal before NCLAT. Rather than availing the alternate efficacious remedy of Appeal, the petitioner has filed the present Writ Petition which is not tenable.

14. **Submissions Heard**.

15. The Companies Act provides a complete mechanism for holding of Annual General Meetings. *Section 96 of the Act* provides that the Annual General Meeting shall be held each year in addition to any other Meetings that may be held by the Company.

16. *Section 97 of the Companies Act, 2013* further provides that in case there is any default in holding of the Annual General Meeting of the Company, the Tribunal can direct the holding of the Annual General Meeting.

17. *Section 98 of the Companies Act, 2013* further empowers the Tribunal

either *suo moto* or on the Application of any Director or Member of the Company who would be entitled to vote at the Meeting, to order the Meeting of the Company to be called, held or conducted in such manner as the Tribunal thinks fit and gives such ancillary or consequential directions as the Tribunal thinks expedient. It further provides such Meeting held pursuant to the Orders made by the Tribunal under Sub Section (1), shall be deemed to be the Meeting of the Company duly called, held and conducted. Further, ***Section 99*** provides for punishment for default in complying with the provisions of *Section 96, 97 and 98*.

18. The Petitioner herein in accordance with the scheme of the Companies Act, has rightly approached the NCLT with a Petition under *Section 241 of the Companies Act, 2013* wherein admittedly one of the five Reliefs claimed are for holding of the Annual General Meeting. Though the waiver has not been granted to the Petitioner since the Petition was not supported by $1/5^{th}$ members of the Company, however, *Section 421 of the Companies Act, 2013* clearly provides for a remedy by way of an Appeal to Appellate Tribunal. The Petitioner himself has submitted that he intends to approach the NCLAT for redressal of his grievances of rejection of petition under *Section 241 of the Companies Act*, by NCLT.

19. From the submissions of the Petitioner himself it is evident that *firstly,* the AGM was scheduled for 29.09.2023 but could not be held on account of sealing of premises by DDA which is still continuing. *Secondly,* he has already approached the NCLT and has an alternate efficacious remedy to file an Appeal against the orders of NCLT under *Section 421 of the Companies Act, 2013.*

20. There being an alternate efficacious remedy available to the Petitioner, the present Writ Petition is not maintainable.

21. The Petition is accordingly dismissed along with pending Application.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 24, 2024/*rk/S.Sharma*