



2025:DHC:527



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

% **Pronounced on: 27th January, 2025**

+ **W.P.(C) 16085/2023**

RAMAKANT AND CO. PRIVATE LIMITED.

AC-1/181 B, Shalimar Bagh,
Delhi-110088

.....Petitioner

Through: Ms. Rachna Aggarwal, Advocate

versus

1. **UNION OF INDIA**

Through Secretary
Ministry of Corporate Affairs
A-Wing, Shastri Bhawan,
Rajendra Prasad Road,
New Delhi-110001

2. **REGISTRAR OF COMPANIES**

NCT of Delhi and Haryana
4th Floor, IFCI tower,
61, Nehru Place,
New Delhi-110019

.....Respondents

Through: Mr. Vineet Dhanda, CGSC for respondent
No.1.

+ **W.P.(C) 16086/2023**

PRASHANT PUBLICATIONS PRIVATE LIMITED

House No.181 B, Block AC,
Shalimar Bagh,
Delhi-110088

.....Petitioner

Through: Ms. Rachna Aggarwal, Advocate

versus

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ARORA

Signing Date: 29.01.2025
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1. **UNION OF INDIA**
Through Secretary
Ministry of Corporate Affairs
A-Wing, Shastri Bhawan,
Rajendra Prasad Road,
New Delhi-110001.

2. **REGISTRAR OF COMPANIES**
NCT of Delhi and Haryana
4th Floor, IFCI tower,
61, Nehru Place,
New Delhi-110019

.....Respondents

Through: Mr. Vineet Dhanda, CGSC for respondent
No.1.

+

W.P.(C) 16090/2023

SANCHI JEWELS PRIVATE LIMITED

(formerly G P S Holdings & Financial Consultants Private Limited).

AC-1/181 B, Shalimar Bagh,
Delhi-110088

.....Petitioner

Through: Ms. Rachna Aggarwal, Advocate

versus

1. **UNION OF INDIA**
Through Secretary
Ministry of Corporate Affairs
A-Wing, Shastri Bhawan,
Rajendra Prasad Road,
New Delhi-110001

2. **REGISTRAR OF COMPANIES**
NCT of Delhi and Haryana
4th Floor, IFCI tower,
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New Delhi-110019

.....Respondents

Through: Mr. Vineet Dhanda, CGSC for respondent
No.1.

+

W.P.(C) 16091/2023**RESORTS CONSORTIUM INDIA LTD..**

AC-1/181 B, Shalimar Bagh,
Delhi-110088.

.....Petitioner

Through: Ms. Rachna Aggarwal, Advocate

versus

1. **UNION OF INDIA**
Through Secretary
Ministry of Corporate Affairs
A-Wing, Shastri Bhawan,
Rajendra Prasad Road,
New Delhi-110001.

2. **REGISTRAR OF COMPANIES**
NCT of Delhi and Haryana
4th Floor, IFCI tower,
61, Nehru Place,
New Delhi-110019.

.....Respondents

Through: Mr. Vineet Dhanda, CGSC for respondent
No.1.

+

W.P.(C) 16134/2023**SEEMAX TECHNOLOGIES PRIVATE LIMITED.**

BH-211 (POORVI), Shalimar Bagh,
Delhi-110088.

.....Petitioner

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Through: Ms. Rachna Aggarwal, Advocate

versus

1. **UNION OF INDIA**
Through Secretary
Ministry of Corporate Affairs
A-Wing, Shastri Bhawan,
Rajendra Prasad Road,
New Delhi-110001.

2. **REGISTRAR OF COMPANIES**
NCT of Delhi and Haryana
4th Floor, IFCI tower,
61, Nehru Place,
New Delhi-110019.

.....Respondents

Through: Mr. Vineet Dhanda, CGSC for respondent
No.1.

+

W.P.(C) 16031/2023

LUCKYGIRL FASHION PRIVATE LIMITED
BH-211 (POORVI), Shalimar Bagh,
Delhi-110088.

.....Petitioner

Through: Ms. Rachna Aggarwal, Advocate.

versus

1. **UNION OF INDIA**
Through Secretary
Ministry of Corporate Affairs
A-Wing, Shastri Bhawan,
Rajendra Prasad Road,
New Delhi-110001.

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2. REGISTRAR OF COMPANIES

NCT of Delhi and Haryana
4th Floor, IFCI tower,
61, Nehru Place,
New Delhi-110019.

.....Respondents

Through: Mr. Vineet Dhanda, CGSC for respondent
No.1.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The above mentioned Writ Petitions under *Article 226/227* of the *Constitution of India, 1950* have been filed by the aforesaid Petitioner Companies for issuing directions to the Respondents to refund the excess amount of Additional Fees charged from the Petitioner Companies on account of delay in filing Financial Statements along with interest @ 18% per annum from the date of payment till the date of actual refund.

2. The ***basic facts*** are that the Petitioner Companies are incorporated and registered with Registrar of Companies under the Companies Act. *Section 137(1)* of the *Companies Act, 2013* mandates that a copy of Financial Statements including the Consolidated Statements along with all the documents duly adopted at the Annual General Meeting (AGM) of the Company, shall be filed with the Registrar of Companies within 30 days of the date of AGM in such manner as may be prescribed. All the respective Companies held their Annual General Meeting on 30.09.2019 for the year ending on 31.03.2019. They were required to file the copy of Financial

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Statements in the prescribed Form AOC-4 at AOC-4 CFS within 30 days of the AGM i.e. latest by 29.10.2019 without payment of any additional fee. In case the Petitioner filed it beyond the said date, it was required to pay an additional fee of Rs.100/- per day of such delay.

3. The Respondent No.1, Union of India, issued ***Circular No.13 of 2019 on 29.10.2019*** which reads as under :

“Keeping in view the requests received from various stakeholders seeking extension of time for filing of financial statements for the financial year ended 31.03.2019 on account of various factors, it has been decided to extend the due date for filing of e-forms AOC-4, AOC-4 (CFS), AOC-4 XBRL upto 30.11.2019 and e-form MGT-7 upto 31.12.2019, by companies without levy of additional fee....”

4. The Petitioners filed their Financial Statements in the requisite format between 19.12.2019 and 22.12.2019, against the extended due date of 30.11.2019.

5. The Respondent's Portal, however, has imposed an additional fee by counting the delay from the original due date of filing of Statements w.e.f. 29.10.2019 despite the Circular for extension taken out by the Respondent No. 1. It is asserted that because the website had not been updated in consonance with the Circular, it continued to calculate the delay on the basis of original dates resulting in collection of additional fee which is in excess, thereby causing loss to all those who had filed their Forms after the extended due date including the Petitioners.



6. The Petitioner Companies claimed refund of the excess additional fee charged by the Respondent No.1's Portal by filing Refund forms, but the Applications were rejected after a period of 3½ years without providing any cogent reasons thereof.

7. The Petitioners asserted that in view of the Circular, they are entitled to refund of the excess amount so charged from them in excess of the legitimate dues. Consequently, by way of present Writ Petitions the Petitioners have sought refund of the excess additional Fee charged by the Respondent No. 2.

8. The **Respondent No.1 and 2 in their Counter-Affidavit** have taken a *Preliminary Objection* that the present Petition is an abuse of the process of law and is liable to be dismissed with exemplary costs.

9. It is submitted that in terms of Section 137(1) of the Companies Act, the requirement of filing Financial Statements including Consolidated Financial Statements is linked to the date of its actual adoption and the Annual General Meeting (AGM) of the Company and such Statement is required to be filed in ROC within 30 days of such date of AGM in the requisite Form, as the case may be.

10. The Petitioners have themselves claimed that the AGM was conducted on 30.09.2019 thereby leading to a presumption that the Financial Statement would have been adopted at the AGM on the said date. However, the Petitioners have filed their Financial Statements after much delay; consequently they are liable for imposition of additional fee.

11. It is further asserted that Circular dated 29.10.2019 did not envisage extension of the date of AGM of Companies. The power to extend the date



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of AGM is vested with the Registrar of Companies in terms of third Proviso to Section 96(1) of the Companies Act. It allows the Registrar to provide extension of AGM for a period not exceeding three months. Thus, the Company which was required to conduct their AGM as on 30.09.2019 of each year may do so by 31st of December of that year, in case extension is granted by the Registrar of the Companies.

12. It is asserted that the Circular dated 29.10.2019 did not extend the date of filing of the Financial Statements of the Companies irrespective of their date of AGM as the due date for filing the Statements in this Circular is clearly stated to be up to 30.11.2019.

13. In case the contention of the Petitioners that the date of Circular i.e. 30.11.2019 was to apply irrespective of the date of AGM for Financial Year 2018-19 and the additional fee could be levied only after expiry of 30 days from 30.11.2019, is accepted, then it would tantamount to amendment of Section 137 of the Companies Act through a Circular. The purpose was clearly conveyed in Circular itself, which provided a date, i.e. 30.11.2019, up to which no additional fee was leviable. The word “up to” clearly suggests that the intention was not to specify any particular due date as a substitute for the date of AGM, but was rather to specify a period up to which no additional fee would be levied for certain Forms. Thus, any filing made after the date mentioned in the Circular, would not get the benefit and fee would be levied in terms of the Companies Act.

14. It is further stated that it is not clear what prevented the Petitioner Companies from filing their Financial Statements within the extended period especially when the AGM had admittedly taken place on 30.09.2019. The



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Financial Statements have been submitted much beyond the date of relaxation i.e. 30.11.2019 and the additional fee has been rightly levied on the Petitioners.

15. **On merit**, all the averments made in the Petition are denied.

16. The *Petitioners in their Rejoinder to the Counter-Affidavit* asserted that the *Circular No.13/2019* has been misinterpreted by the Respondents who are required to implement it in word and spirit and not cover its own wrongs.

17. According to the Petitioner, the date for filing Statutory Forms stood extended up to 30.11.2019/31.12.2019 for all Companies irrespective of their date of AGM for the year ending on 31.03.2019 so long as the AGM was held within the statutory period. It is claimed that the Respondents seemed to be confused and have raised fallacious objections. In the present case, no extension of AGM is involved; once the last date of filing of Forms stood extended for a particular date, no additional fee could have been levied for the period covered by the extended date.

Submissions heard and record perused.

18. To understand the issue raised in the present Petitions, it would be relevant to refer to certain provisions of Company Act.

19. *Section 97 of the Companies Act* provides for holding of Annual General Meeting by the Companies within six months of the end of the financial year i.e. 31st March. It reads as under: -

“97. Power of Tribunal to call annual general meeting.—

(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:

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."

20. This is a mandatory provision of the *Companies Act* which does not admit to any exception that each Company is bound to hold its AGM by 30th of September of the next financial year. The only exception is provided in its proviso wherein it is only the Registrar of Companies who has the jurisdiction to extend the date of holding the AGM by another three months. Therefore, which with the permission of ROC, AGM can be conducted till 31st of December of that year.

21. In this context, it is also pertinent to refer to *Section 137(1)* of Company Act, which reads as under:-

*(1) A copy of the **financial statements**, including consolidated financial statement, if any, along with all the documents which are required to be or attached to such financial statements under this Act, duly adopted at the annual general meeting of the company, shall be filed with the Registrar within thirty days of the date of annual general meeting in such manner, with such fees or additional fees as may be prescribed within the time specified under section 403:*

Provided that where the financial statements under sub-section (1) are not adopted at annual general meeting or adjourned annual general meeting, such unadopted financial



statements along with the required documents under sub-section (1) shall be filed with the Registrar within thirty days of the date of annual general meeting and the Registrar shall take them in his records as provisional till the financial statements are filed with him after their adoption in the adjourned annual general meeting for that purpose:

Provided further that financial statements adopted in the adjourned annual general meeting shall be filed with the Registrar within thirty days of the date of such adjourned annual general meeting with such fees or such additional fees as may be prescribed within the time specified under section 403:

Provided also.....:

Provided also.....”

22. This Section again makes it abundantly clear that the *Financial Statements* have to be filed by the Company mandatorily within thirty days of holding of the AGM and it does not admit to any exception. However, it is explained that in case for whatever reason the AGM is not held within time wherein the Financial Statements could be approved, the unadopted *Provisional Financial Statements* may be filed and the Financial Statements are approved by the AGM, may be filed with the ROC, on approval in AGM.

23. From the comprehensive reading of the aforesaid provisions, it emerges that the AGM of a Company has to be held by the 30th September of the given year which can be extended maximum by three months by the ROC. It is a Statutory Provision and the date of holding of AGM cannot be modified or changed by any Office Order.

24. In the present case, the Petitioners in consonance with the provisions of the *Companies Act*, held their AGM on 29.10.2019 i.e. within the statutory period. Having so done and the financial statements having been



approved in the AGM, they were bound to submit the said statements to the ROC within thirty days of the AGM as has been provided in *Section 137 of the Companies Act*. There is no circumstance in which Section 137 can be modified or the period of submitting the Financial Statements extended beyond the 30 days from the date of holding the AGM.

25. Moreover, S.403 also gives insight into the stringency of the prescribed timeline and charging of additional fee when there is a delay in the same. *Section 403* is reproduced as under:

“403: Fee for filing, etc

(1) Any document, required to be submitted, filed, registered or recorded, or any fact or information required or authorised to be registered under this Act, shall be submitted, filed, registered or recorded within the time specified in the relevant provision on payment of such fee as may be prescribed:

[Provided that where any document, fact or information required to be submitted, filed, registered or recorded, as the case may be, under section 92 or 137 is not submitted, filed, registered or recorded, as the case may be, within the period provided in those sections, without prejudice to any other legal action or liability under this Act, it may be submitted, filed, registered or recorded, as the case may be, after expiry of the period so provided in those sections, on payment of such additional fee as may be prescribed, which shall not be less than one hundred rupees per day and different amounts may be prescribed for different classes of companies:] ”

26. From this Section 403 also, it is evident that whatever are the timeframes provided under the Act for filing of the documents, statement etc., if not done within the given time, then the same shall be accepted on



payment of the penalty as described therein i.e. not less than Rs.100/- per day. This Section also does not give any discretion to extend the time of taking the Statements u/s 92 or 137 of the Companies Act or of reducing/waiving the fines.

27. The Petitioners have now asserted that the Circular dated 29.10.2019 has extended the time of filing the *Financial Statements* till 30.11.2019.

28. To understand the true import, the Circular dated 29.10.2019 may be referred, which reads as under:-

“Keeping in view the requests received from various stakeholders seeking extension of time for filing of financial statements for the financial year ended 31.03.2019 on account of various factors, it has been decided to extend the due date for filing of e-forms AOC-4, AOC-4 (CFS), AOC-4 XBRL upto 30.11.2019 and e-form MGT-7 upto 31.12.2019, by companies without levy of additional fee....”

29. From the bare perusal of this Circular, it is abundantly clear that it provided a window for filing the Financial Statements by the Companies latest by 30.11.2019. It was only to deal with the situation where any Company had failed to submit their Financial Statements within the prescribed time period, they permitted to be filed within the relaxation period extended *vide* Circular dated 29.10.2017, i.e. by 30.11.2019. This situation would have arisen for Companies which may have sought extension of time from ROC to conduct their AGM beyond 30th of September.

30. This Circular cannot be interpreted to read that the date of holding the AGM as provided under S. 97 or of consequent submission of Financial



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Statements within 30 days thereafter as provided under S. 137 of Companies Act, was modified or extended. To interpret the Circular as extending the time of filing the Financial Statements beyond 30 days of AGM, would tantamount to amendment of the Provisions of the Act, which no Administrative Circular can do.

31. Therefore, the Petitioners are not correct in their Claim that the Financial Statements could have been filed by 30.11.2019.

32. Linked to this argument is that because the Financial Statements have been filed in December, 2019, the penalty if any to be imposed, be calculated from 01.12.2019 and not from 30.10.2019.

33. However, in light of the aforesaid discussion it is evident that the Petitioners were liable to submit their Financial Statements by 29.10.2019 which they have failed to do in accordance with *Section 137 of the Companies Act*. Therefore, the penalty has been rightly imposed by the Respondents w.e.f. 30.10.2019.

34. There is no merit in the present Writ Petitions which are hereby dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

JANUARY 27, 2025
VA/rk