

**BEFORE THE COMPANY LAW BOARD, MUMBAI BENCH, MUMBAI**

**Present: Shri. Ashok Kumar Tripathi  
Member (Judicial)**

**Company Petition No.01 of 2014**

**Under Section 167 of the  
Companies Act, 1956.**

**In the matter of:**

**Mr. Harshad J. Bakshi**

**... Petitioner**

**Versus**

- 1. M/s Choksi Tube Company Ltd. (R-1)**
- 2. Mr. Shaunak Harshad Choksi (R-2)**
- 3. Mr. Himanshu Harshad Choksi (R-3)**
- 4. Mr. Mahipendrasingh P. Parmar. (R-4)**

**... Respondents**

**Counsel appeared on behalf of the Parties :-**

1. Mr. V. G. Venkataraman, PCS, for the Petitioner.
2. Mr. Sharan Jagtiani, Advocate a/w Mr. Kersi Dastoor, Advocate, i/b M/s Phoenix Legal, for the Respondents.

**Judgment**

(Reserved on January 20, 2015)  
(Delivered on January 22, 2015)

1. The above captioned Company Petition has been filed u/s 167 of the Companies Act, 1956 (hereinafter referred to as "the Act" in short) by the Petitioner seeking the following reliefs :-

a) *To pass an order thereby declaring that the Annual General Meetings of the Respondent No.1 shown as held for the financial years 2003-04 to 2009-10 as invalid as the said AGMs have been improperly shown to have been convened/held without authority by persons who were not directors of the Respondent No.1 who by their own affidavits to the Hon'ble Gujarat High Court were not Directors of the Respondent No.1 since December 2004.*

b) *To pass an order thereby holding the Resolutions purported to have been passed by the extra ordinary general meeting held on 20/12/2007 for appointment of and payment of remuneration to Mr. Shaunak H. Choksi (as Managing Director), Respondent No.2 and Mr. Himanshu Harshad Choksi (as Whole-time Director), Respondent No.3, as invalid and preventing the said persons from returning the remunerations drawn by them to the Respondent No.1 and not to draw any further remuneration from the Respondent No.1 till their appointments are ratified by a duly convened general meeting of the Respondent No.1.*



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c) To pass an order thereby directing the Respondent No.1 to convene its annual general meeting for the year ended 30/06/2004 within 45 days from the date of order of this Bench.

d) Pending the holding of AGM of the Respondent No.1, to pass an order thereby appointing an Administrator, to take charge of the affairs of the Respondent No.1.

e) To pass an order thereby appointing a person of repute or a professional to act as the impartial chairman of the AGM of the Respondent No.1 to be convened.

f) Pending the holding of the AGM of the Respondent No.1, to pass an order thereby directing the other respondents not to create, alienate, sell, dispose of, transfer or in any manner handle the properties and assets of the Respondent No.1 or to represent themselves as directors of Respondent No.1.

g) To pass an order thereby directing the Respondent No.1 to pay and bear the costs and expenses to be incurred for convening and holding AGM of the Respondent No.1.

h) To pass an order thereby directing the Respondent Nos.2 to 4 to extend their co-operation and provide required members details and arrange funds for expenses for convening and holding the AGM.

2. On behalf of the Respondents, Reply has been filed, to which a Rejoinder has also been filed by the Petitioner. I have heard the Ld. Counsels appearing for the parties at length and perused the record.

3. Before I proceed to consider the rival submissions, it seems useful to refer to the provisions contained in Sections 166, 167, 168, 255 and 256 of the Companies Act, 1956, which are relevant for the purpose of adjudication of the instant application, which are as under :-

**"Annual General Meeting.**

**166.** [(1) Every company shall in each year hold in addition to any other meetings a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it; and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next :

**Provided** that a company may hold its first annual general meeting within a period of not more than eighteen months from the date of its incorporation; and if such general meeting is held within that period, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation or in the following year :

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**Provided further** that the Registrar may, for any special reason, extend the time within which any annual general meeting (not being the first annual general meeting) shall be held by a period not exceeding three months.]

(2) Every annual general meeting shall be called for a time during business hours, on a day that is not a public holiday, and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situate.

[**Provided** that the Central Government may exempt any class of companies from the provisions of this sub-section subject to such conditions as it may impose :

**Provided further** that -

(a) a public company or a private company which is a subsidiary of a public company, may by its articles fix the time for its annual general meetings and may also by a resolution passed in one annual general meeting fix the time for its subsequent annual general meetings; and

(b) a private company which is not a subsidiary of a public company, may in like manner and also by a resolution agreed to by all the members thereof, fix the time as well as the place for its annual general meeting.]

**"[Power of Central Government to call annual general meeting.**

**167.** (1) If default is made in holding an annual general meeting in accordance with Section 166, the Central Government may, notwithstanding anything contained in this Act or in the articles of the company, on the application of any member of the company, call, or direct the calling of, a general meeting of the company and give such ancillary or consequential directions as the Central Government thinks expedient in relation to the calling, holding and conducting of the meeting.

*Explanation.* - The directions that may be given under this sub-section 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 Central Government, be deemed to be an annual general meeting of the company :

**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 if for the words "Central Government", the word "Tribunal" had been substituted.]"



4. Assailing the maintainability of the Petition, the Ld. Counsel, appearing on behalf of the Respondents, has primarily contended that the prayers made by the Petitioner in the Petition are not within the ambit of scope of the provisions contained in Section 167 of the Act, and therefore, the Petition deserves to be dismissed in *limine*. To support his contention, the Ld. Counsel for the Respondents has relied on the decision in the cases of (i) **National Textile Corporation \*Uttar Pradesh) Ltd. vs. Swadeshi Polytex Ltd. & Ors.** ([1998] Company Cases 91 Vol.92), and (ii) **Gracy Thomas v. Four Square Estates P. Ltd. & Ors.** ([2008] 141 CompCas 770 (CLB) Vol.141.

5. In reply to the aforesaid contentions, the Ld. PCS, representing the Petitioner, has submitted that the Board of Directors of the Company, who have allegedly called, convened and held the AGMs were not validly appointed as Directors in accordance with the provisions of the Companies Act, 1956 and Articles of Association of the Company, and therefore, an invalid Board of Directors, was not entitled legally competent to call, convene and hold the AGMs, and hence, the AGMs under challenge are void, illegal and ineffective and the Resolutions passed thereat are, therefore, required to be set aside/quashed.

6. I have considered the rival submissions. In my opinion, this petition, on the face of it, is not maintainable as contended by the Ld. Counsel for the Respondents. The prayer as per clause (a) of the Petitioner clearly shows that the Petitioner has sought relief to the effect that the Annual General Meetings of the Respondent No.1 Company shown as held for the Financial Years 2003-2004 to 2009-2010 be declared as invalid. Prayer clause (b) of the Petition reveals that the Petitioner has sought cancellation of various Resolutions purported to have been passed in the EOGM held on 20/12/2007, by which appointments of Mr. Shaunak H. Choksi (Respondent No.2) as Managing Director and Mr. Himanshu Harshad Choksi (Respondent No.3) as Whole-time Director, were made and their remunerations were fixed. It is, therefore, established that there is no default in holding the AGM as contemplated in Section 167 of the Act. The challenge as to validity of the AGMs, in my considered view, does not fall within the purview of the provisions contained in Section 167 of the Act as held in the cases (i) **National Textile Corporation (U.P.) Ltd. vs. Swadeshi Polytex Ltd. & Ors.,** (*Supra*). and (ii) **Gracy Thomas v. Four Square Estates P. Ltd. & Ors.**



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(Supra). The relevant extracts of the said decisions are being reproduced herein below for the sake of convenience:-

(i) **National Textile Corporation \*Uttar Pradesh) Ltd. vs. Swadeshi Polytex Ltd. & Ors. ([1998] Company Cases 91 Vol.92),**

"The annual general meeting of a company is an opportunity to take stock of the affairs of the company and carry out certain routine business. The objective of this section is to facilitate an annual meeting of the share-holders through the intervention of the Company Law Board in case the directors fail to hold the annual general meeting in accordance with the provision/s of section 166 of the Companies Act, 1956. Section 166 provides for calling of an annual general meeting which should satisfy two conditions namely, (a) there shall be an annual general meeting very year, (b) there shall not be a gap of more than 15 months between two annual general meetings".

(ii) **Gracy Thomas v. Four Square Estates P. Ltd. & Ors. ([2008] 141 CompCas 770 (CLB) Vol.141.**

"..... In the present case, whether the company has defaulted in holding the annual general meetings for the period between 1998-99 and 2003-04 itself is under serious dispute, which however does not fall within the scope of section 167. This section does not empower the company Law Board to adjudicate any dispute regarding the validity of any annual general meeting, but merely direct the calling of the meeting in the event of default in this regard. In view of this, the Company Law Board cannot exercise the power under section 167 unless and until the validity of the annual general meetings purportedly held during the disputed period is adjudicated by the civil court in the pending suit, upon which the applicant is at liberty to apply before the Company Law Board for appropriate directions in terms of section 167 of the Act. I am not, therefore, inclined to make any order on the prayer made by the applicant in directing the company to convene the annual general meeting for the years between 1998-99 and 2003-04. Ordered Accordingly."

7. For the reasons stated hereinabove, the petition is not maintainable and deserves to be dismissed in *limine*. C.P.No.1 of 2014 is dismissed accordingly.

8. No order as to costs.

9. Interim order, if any, stands vacated. Pending C.A., if any, stands disposed off.

10. Copy of the order be issued to the parties.

Sd/-  
(A.K.Tripathi)  
Member (Judicial)

Dated this January 22, 2015.



CERTIFIED TO BE TRUE COPY

S. P. SAWANT, ICLS  
Bench Officer  
Company Law Board  
Mumbai Bench

Dated: 03/01/2015