

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

C. O. No. 62104 of 2023

**Shahid Mahmood & Company (Pvt.) Limited
and 2 others**

Versus

Zahid Mahmood and 5 others

JUDGMENT

Date of hearing:	04.06.2024
Petitioners by:	Mr. Bilal Kashmiri, learned Advocate.
Respondents No. 1 to 5 by:	Mr. Faisal Islam, learned Advocate.
Respondent No. 6 by:	Mr. Ruman Bilal, learned Advocate.

Sultan Tanvir Ahmad, J:- In this petition, extra ordinary general meeting (**EOGM**) dated 31.12.2020, the decisions taken therein and superstructure built thereupon have been challenged. Besides request to rectify the register of directors and other prayers, the petitioners have also sought to declare the following documents as null and void:-

- i. Board Resolution dated 23.01.2023 (Annex-I)*
- ii. Letter dated 24.01.2023 (Annex-J)*
- iii. Payment Challan dated 24.01.2023 (Annex-K)*
- iv. Form-28 dated 21.02.2023 (Annex-L)*
- v. Form-29 dated 21.02.2023 (Annex-M)*

vi. *Electronic Form-28 dated 23.02.2023 (Annex-N)*

vii. *Electronic Form-29 dated 23.02.2023 (Annex-O)*

2. M/s Shahid Mahmood & Company (Pvt.) Limited (hereinafter called as the “**Company**”) was incorporated on 01.10.1995 with authorized capital of Rs.20,000,000/- divided into 200,000 ordinary shares of Rs.100/- each. As per Form-A filed until 31.12.2020 and record of respondent No. 6 / Securities & Exchange Commission of Pakistan (**SECP**), petitioner No. 2 and petitioner No. 3 are holding 52000 and 2000 shares, whereas, respondents No. 1 to 5 are holding 48500, 50500, 5000, 2000 and 40000 shares, respectively. It is the claim of petitioners No. 2 and 3 that on account of the dispute *inter-se* the directors as well as shareholders, no meeting has taken place, however, respondents No. 1 to 5 prepared fake documents including Form-28 and Form-29 dated 31.12.2020 and then filed the same on 21.02.2023 with **SECP**; that the election of directors or EOGM has never taken place. It is further averred that above referred ante-dated documents being bogus are liable to be declared null and void.

3. Mr. Bilal Kashmiri (learned ASC), on behalf of the petitioners has submitted that respondents No. 1 to 5 have prepared back dated forms on the basis of EOGM dated 31.12.2020, which has never taken place, to deprive petitioner No. 2 (Chief Executive and director) and petitioner No. 3 (director), from their rights given under the Companies Act, 2017 (the ‘**Act of 2017**’). Learned counsel for the petitioners invited the attention of the Court towards various provisions of the *Act of 2017* and he has stated that provisions relating to

issuance of notice, convening or holding the statutory meeting are not followed or reflected from the record, which essentially makes it amply clear that the fake documents were prepared in the year 2023 without any meeting and by staging this fraud Petitioners No. 2 and 3 have been excluded from management and they have been deprived from their rights under the company law; that this act of fraud is further evident from failure to file timely return under section 197(3) of the *Act of 2017*; that mandatory provisions of sections 55, 133, 158 and 159 have been violated. Learned counsel added that it remained the case of petitioners No. 2 and 3 throughout before this Court as well as the *SECP* that the documents are fake and they are not backed-up by any meeting or valid resolution, however, till to date respondents No. 1 to 5 have failed to produce any notice, any evidence about the date of notice, receipt of notice or agenda of meeting, which clearly reflects the fraud.

4. Mr. Faisal Islam-learned ASC, on behalf of respondents No. 1 to 5, has raised objections as to the maintainability of the present petition on the basis of delay relying upon section 136 and 160 of the *Act of 2017*. He stated that the said provisions require to approach the Court within thirty days from the date of election of directors or relevant meeting, whereas, present petition is filed after more than three years of the EOGM dated 31.12.2020, in which respondents No. 1 and 2 were elected as directors. He also raised objection that the *Company* has been wrongly impleaded as one of the petitioners in the array of parties, which cannot be maintained as such. He also contended that the *SECP*

cannot refuse to accept any form or document on account of delay in view of Section 468 of the *Act of 2017*.

5. Mr. Ruman Bilal, learned counsel for respondent No. 6 / *SECP* has filed para-wise comments and relevant record. He has reiterated contents of para-wise comments, in course of his arguments.

6. I have heard the arguments and gone through the documents produced before the Court by the contesting parties as well as the record provided by *SECP* with its comments.

7. To refute the allegation of filing fake documents with the *SECP*, respondents No. 1 to 5 have asserted that decision(s) and the documents are in pursuant to the decisions taken in EOGM under section 133(5) of the *Act of 2017*, which took place on 31.12.2020 and respondents No. 1 and 2 were elected as directors after adopting procedure and in compliance of substantial law given in section 159 of the *Act of 2017*. Section 159 of the *Act of 2017* is reproduced as under:-.

“159. Procedure for election of directors.

(1) Subject to the provision of section 154, the existing directors of a company shall fix the number of directors to be elected in the general meeting, not later than thirty-five days before convening of such meeting and the number of directors so fixed shall not be changed except with the prior approval of the general meeting in which election is to be held.

(2) The notice of the meeting at which directors are proposed to be elected shall among other matters, expressly state----

(a) the number of directors fixed under sub-section (1); and

(b) the names of the retiring directors.

(3) Any member who seeks to contest an election to the office of director shall, whether he is a retiring director or otherwise, file with the company, not later than fourteen days before the date of the meeting at which elections are to be held, a notice of his intention to offer himself for election as a director:

Provided that any such person may, at any time before the holding of election, withdraw such notice.

(4) All notices received by the company in pursuance of sub-section (3) shall be transmitted to the members not later than seven days before the date of the meeting, in the same manner as provided under this Act for sending of a notice of general meeting. In the case of a listed company such notice shall be published in English and Urdu languages at least in one issue each of a daily newspaper of respective language having wide circulation.

(5) xxxx

(6) xxxx”

(Emphasis supplied)

Sub-section 2 of Section 159 of the *Act of 2017*, reproduced above, requires notice of meeting at which directors are proposed to be elected, specifying number of directors fixed and names of retiring directors. Any member, retiring or otherwise, can give notice of intention to offer himself for election of directors in terms of Section 159(3) *ibid*. Notices of intention received by company are required to be transmitted to members not later than seven days before the date of meeting.

8. It has been claimed by learned counsel for respondents No. 1 to 5 that directors / respondents No. 1 and 2 were appointed in EOGM dated 31.12.2020. Section 133 of the *Act of 2017* permits directors to call

EOGM to consider any matter that requires the approval of the company. EOGM can also be requisitioned by members by adopting the course given in section 133 (2) of the *Act of 2017* and subsequent sub-sections. However, notice of EOGM is required to be served upon the members under section 133(8) of the *Act of 2017*. It will be beneficial to reproduce of the relevant part of section 133 which reads as under:-

“133. Calling of extra-ordinary general meeting.

(1) to (7) xxxxx

*(8) **Notice of an extra-ordinary general meeting shall be served to the members in the manner provided for in section 55:***

Provided that in case of a company other than listed, if all the members entitled to attend and vote at any extraordinary general meeting so agree, a meeting may be held at a shorter notice.

(9) Any contravention or default in complying with requirement of this section shall be an offence liable

(a) in case of a listed company, to a penalty of level 2 on the standard scale; and

(b) in case of any other company, to a penalty of level 1 on the standard scale.”

(Emphasis supplied)

The above provision clearly requires that notice of EOGM should be served to the members in the manners given in section 55 of the *Act of 2017*, which reads as under:-

“55. Service of notice on a member.

(1) A document or information may be served on a member at his registered address or, if he has no registered address in Pakistan, at the address supplied by him

to the company for the giving of notices to him against an acknowledgement or by post or courier service or through electronic means or in any other manner as may be specified.

(2) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice and, unless the contrary is proved, to have been effected at the time at which the letter will be delivered in the ordinary course of post.

(3) A notice may be given by the company to the joint-holders of a share by giving the notice to the joint-holder named first in the register in respect of the share.

(4) A notice may, in the manner provided under sub- section (1), be given by the company to the person entitled to a share in consequence of death or insolvency of a member addressed to him by name or by the title or representatives of the deceased or assignees of the insolvent or by any like description, at the address supplied for the purpose by the person claiming so to be entitled.”

The Act of 2017 has given complete mechanism from calling a meeting, its notice with agenda of any special business, conducting meeting and giving voting rights etc. In the present case, the respondents have though produced an extract from minutes of alleged meeting but somehow during the entire dispute before the SECP and the proceedings before this Court, the date when meeting was called / date when the notice was issued or any copy of issued notice to the members or the agenda of meeting conspicuously remained missing.

9. In case titled “Khalid Mehmood and 4 others vs. Messrs Multi Plus Corporation Private Limited and 2 others” (2017 CLD 1737) learned Sindh High Court,

while interpreting the then applicable provisions of sections 159 and 178 of the Companies Ordinance-1984, concluded that failure to convene meeting / EOGM in the manners provided therein or not issuing notice of the same, since followed by penal provisions, are mandatory. The contravention of provision, as to holding EOGM under Section 133 of the *Act of 2017*, once again carries penal consequences. I would like to reproduce the relevant extract of Khalid Mehmood case (*supra*):-

“...Provision of penalty or a consequence in the above sections makes them mandatory in nature, as subsection (7) of section 159 of the Company Law in clear terms has mandated that twenty one (21) days clear notice should be given to the members before the date of meeting, as far as non-listed corporate entity is concerned, which is the present case.....

11. In view of the above discussion, since the EOGM in dispute was not convened in accordance with the mandatory provisions of the Company Law, therefore, the same is a nullity in the eyes of law and any Business transacted thereat is also illegal. Conscious of the fact that defendant No. 1 being a corporate entity cannot be run without a Board of Directors, thus, the concept of transition contained in section 176 of the Company Law is invoked, but merely as an interim arrangement and solely for the transitory period. Consequently, the Board of Directors existing immediately before the above EOGM is restored, with the sole object to hold fresh elections of the Board of Directors, strictly in accordance with law, inter alia, by giving twenty one (21) days clear notice before the date of EOGM on which election is to be held, as mandated in section 159 of the Company Law, besides complying with other relevant provisions.”

(Underlining is added)

In case titled “Nizam Hashwani vs. Hashwani Hotels Limited and 14 others” (1999 CLC 1989) the requirement to issue notice of EOGM to conduct such business was discussed in the following manners:-

“It was strenuously argued on behalf of the plaintiff that the elections of the nine Directors held during the meeting of E.G.M. of 23-1-1995 was illegal and defective inasmuch as the notices were not issued in strict compliance of section 159(7) and section 50(2) of the Companies Ordinance, 1984. He has relied upon the case of The Karnal Distillery Company Limited Karnal PLD 1556 (W.P.) Lah. 731 wherein a learned Single Judge of the Lahore High Court B. Z. Kaikous, J. (as his Lordship then was) held that if a notice sent on 4th March is served on 8th March and the meeting was held on 28th March, the number of clear days would be only 19. Reliance was placed by the Lahore High Court on the cases of Railway Sleepers Supply Company's case (1885) 29 CH 204 and Hector Shalling Limited's case (1936) 1. In the instant suit the defendants have refuted these allegations of the plaintiff and have maintained that there was no violation of Companies Ordinance, 1984 by holding E.G.M. and elections of Directors. Subsection (7) to section 159 of the Companies Ordinance provides that the notice of Extraordinary General Meeting shall be issued to the members at least 21 days before the date of meeting. Subsection (2) to section 50 provides that in case a notice is issued, services of the same shall be deemed to be effected, if it is properly addressed pre-paid and posted unless the contrary is proved.”

(Emphasis supplied)

To pass a resolution, holding a valid meeting with the required quorum after due notice, has always

been considered important even in the previous enactment(s) as well as under the common law. In case titled “In the matter of the Karnal Distillery Company Ltd., Karanaland of the application of Mr. L.P. Jaiswal” (PLD 1956 Lahore 731) meeting without notice was held invalid. The following part of the said judgment is highly relevant:-

*“...The justification pleaded for this omission to give a notice is the new article 120 of the company wherein it has been provided that a meeting of the directors would be held on the first Sunday of each month. It is urged that there was, in view of this article, no need for sending a notice at all. I have no hesitation in rejecting this argument. The articles, no doubt, provide that a meeting would be held, as far as possible on the first Sunday of each month but they do not provide for any time and place and a notice is also necessary because every director is to be informed beforehand of the agenda of the meeting. I may also refer to the provision in the articles of association that a notice of the directors' meeting is to be sent by registered post-card and that no notice is necessary for a director who is not in India. **These provisions would have been unnecessary and out of place if the mere fact that a meeting was to be held on the first Sunday of each month was sufficient notice. I hold that a notice for this meeting was necessary and there being no notice the meeting, as was held in H. M. EbrahimSait v. South India Industrials Ltd. (1) was invalid.**”*

(Emphasis supplied)

10. It is the claim of petitioners No. 2 and 3 that no meeting of the *Company* has been held since 2018 due to complete deadlock and dispute *inter-se* the shareholders as well as the directors. The petitioner-side also relied

upon Form-29 dated 31.12.2017 registered with the SECP on 31.01.2018 and they have stated that no change has taken place since then. Importantly, the SECP has also confirmed that the Company or respondents No. 1 to 5 have never intimated or filed the required documents until the recent past. SECP has highlighted the following position as per their record and prior to the filing that resulted into dispute, in response to paragraphs 3 and 4 of the petition:-

“3. No Comments except that Mr. Shahid Mehmood is CEO of the Company since its incorporation. As per Form A made up to 28-10-2020 the shareholding position of the Company is given below:-

S.No.	Name of Shareholder	Number of Shares
1	Mr. ShahidMehmood/Petitioner No.2	52000
2	Mr. Zahid Mehmood/Respondent No.1	48500
3	Mr. AbidMehmood/Respondent No 2	50500
4	Mrs. FirdousBano/Respondent No.3	5000
5	Mr. Hamid Mehmood/Respondent No.5	40000
6	Mr. Umer Farooq/Petitioner No.3	2000
7	Mr. Usman Zahid /Respondent No.4	2000
Total		200,000

4. Correct as per Form 29 dated 31-12-2017, filed by the Company. Following persons are the director of the Company:-

S.No .	Name of Person	Designa- tion
1	Mr. ShahidMehmood/Petitioner No.2	Director/ CEO
2	Mr. Zahid Mehmood/Respondent No.1	Director
3	Mr. AbidMehmood/Respondent No 2	Director

4	Mrs. FirdousBano/Respondent No.3	Director
5	Mr. Umer Farooq/Petitioner No.3	Director
6	Mr. Usman Zahid /Respondent No.4	Director

11. Mr. Bilal Kashmiri has relied upon different documents and he has stated that no meeting of members or EOGM took place on 31.12.2020; that the extract from minutes of meeting and subsequent actions are fake and fabricated. He unequivocally argued that no meeting was called for the above purposes as well as no notice was issued or served upon petitioners No. 2 and 3. Mr. Faisal Islam- learned ASC though denied that the documents are forged and fabricated, however, he failed to show anything from record regarding any notice for alleged EOGM or even disclose the date of issuing or service of notice(s). This dispute remained pending before the *SECP* for some time and before *SECP* issued letter dated 19.05.2023 referring to sections 466, 197(5) and 160 of the *Act of 2017*. The contesting respondents were repeatedly asked to provide documents or to answer about the deficiencies. They filed different replies before *SECP*. Perusal of the same, including the written response dated 10.03.2023 filed by the respondents and appended with the reply to this petition, reflect that the same is totally silent about the above deficiencies including calling date of EOGM, notices etc.

12. Right from the beginning of dispute, petitioner No. 2 kept complaining before *SECP* that respondents are deliberately reluctant to give proof or appending document showing that EOGM was ever called or it took place. This complaint is also reflected from letter dated

17.05.2023 available on the file. Somehow, respondents No. 1 to 5 even up till now are reluctant to append those documents or to show anything from the record if any notice was ever prepared. It is averred in the reply that EOGM has taken place on 31.12.2020 when two directors namely Zahid Mahmood and Abid Mahmood were elected. This reply does not reflect the date of notice(s), their issuance or service. The reply is totally silent as to which mode of service under section 55 of the *Act of 2017* was adopted. The reply does not contain plausible reason or justification to stay silent for years and not contacting *SECP* or filing the forms or the required return. Form-29 in dispute contains date of 31.12.2020. No cause could be given by the respondents for not filing the same through electronic mode or otherwise for more than two years and then getting it received manually on 21.02.2023.

13. Mr. Faisal Islam- learned ASC for respondents No. 1 to 5 instead of offering response to all above, has mainly focused on his preliminary objection(s), much emphasizing on the proviso to section 136 and section 160 of the *Act of 2017*, arguing that meeting can be called into question within thirty days only and the same period is provided for challenging election of directors. The relied provisions read as under:-

“136. Power of the Court to declare the proceedings of a general meeting invalid. The Court may, on a petition, by members having not less than ten percent of the voting power in the company, that the proceedings of a general meeting be declared invalid by reason of a material defect or omission in the notice or irregularity in the proceedings of the meeting, which prevented members

from using effectively their rights, declare such proceedings or part thereof invalid and direct holding of a fresh general meeting: Provided that the petition shall be made within thirty days of the impugned meeting.”

“160. Powers of the Court to declare election of directors invalid. The Court may, on the application of members holding ten percent of the voting power in the company, made within thirty days of the date of election, declare election of all directors or any one or more of them invalid if it is satisfied that there has been material irregularity in the holding of the elections and matters incidental or relating thereto.

Section 136 of the *Act of 2017* provides that proceedings of general meeting can be declared invalid for the reasons of material defect or omission in the notice or irregularity in the proceedings of the meeting, which *prevented members from using effectively their rights*. The proviso to the same reads that petition in this regard can be made within thirty days of the impugned meeting. Section 160 of the *Act of 2017* also provides thirty days to challenge the election of all the directors or any one or more of them on the ground of material irregularity in holding the election. Admittedly, the legislature has envisaged thirty days period to challenge a meeting, however, the case in hand is not that of irregularity or defective meeting but no meeting at all. It is not the case of the petitioners either that the election of directors has taken place which suffers from material irregularity. The proposition put-forth by learned counsel for petitioner No. 2 and 3 is that no meeting has taken place and only documents are submitted to change the existing position or composition of the board and

objection is raised after filing untrue documents with *SECP* that too after more than two years of the so-called meeting; the peculiar facts and circumstances of the case give rise to the question that in the absence of holding EOGM, if it can be permitted to merely file forms or documents with *SECP* and then to state that challenge was required to be made within thirty days by simply showing an extract of minutes of so-called meeting that pertains to a period much prior to thirty days, claiming before the Court that delay is caused by the party complaining. The above discussed provisions do not contemplate that instead of holding meeting just to file forms backed up by some extract from minutes of clueless and so-called meeting and then to take shelter of thirty days period to make challenge. Proviso to section 136 of the *Act of 2017* provides that *petition shall be made within thirty days of the impugned meeting* but present case is one where holding of meeting or EOGM could not be convincingly shown from the record. In the unusual circumstances of the case, respondents No. 1 to 5 should have first persuaded or at-least demonstrated with some certainty that the EOGM has actually taken place and then to seek shelter of the period provided by law to make challenge. Learned counsel for the petitioners has stated that falsehood is further evident from failure to file return or forms for such a long time period. He has stated that even return in terms of section 197(3) of the *Act of 2017* for the change claimed in pursuance to the so-called EOGM does not exist. This position is confirmed by *SECP*. Learned counsel for respondents No. 1 to 5 instead of explaining the reasons for non-compliance of

several provisions of the *Act of 2017* is simply seeking escape on the basis of period to make challenge, however, he even could not produce copy of notice, the mode adopted under section 55 of the *Act of 2017* or any affidavit from the respondents to show the date of issuing notice of the EOGM inviting all entitled to notice, attend and vote in the EOGM.

In case titled “Tariq Aziz and others vs. Makhdum Ahmed Mahmud and others” (2022 CLD 1279) this Court, while exercising powers under sections 136 and 160 of the *Act of 2017* and declaring the concerned election as invalid, directed to hold fresh meeting and concluded:

...Section 160 of the Act empowers the Court to declare election of all directors or any one or more of them' invalid if it is satisfied that there has been material irregularity in its holding. Therefore, in the light of principles enunciated in "National Investment Trust Ltd. v. Al-Qaim Textile Mills Ltd." (1999 CLC 926) wherein it was held that "the very meeting held on the 27th March, 1998 was irregular and not in accordance with law as the members were prevented from using their right to vote effectively. In consequence thereof; the proceedings of Agenda Item No.3 relating to elections of Directors are declared to be invalid and the respondent is directed to hold afresh a General Meeting for holding of elections of members of the Board of Directors of respondent's Company in accordance with law" the Petitioners' right of vote was denied by the Respondents to participate in AGM....

14. For the above discussed failure(s) on the part of respondents No. 1 to 5 and keeping in view the peculiar circumstances of the case, I have no hesitation to hold

EOGM dated 31.12.2020 and its proceedings as invalid. In consequence thereof, parties are directed to hold afresh general meeting, in accordance with law. Notices and agenda shall be issued strictly in terms of the *Act of 2017*. *SECP* to appoint an officer to supervise the process and the meeting. This process shall be completed within two months from the date of receipt of certified copy of this judgment. It is clarified that no act or transaction with any third party and the *Company* is brought into question in this case. No order as to cost.

15. ***Allowed*** in the above terms.

(Sultan Tanvir Ahmad)
Judge

Announced in open Court on _____.

Judge

Nadeem