



MOMIN JURIS LAW

**“Tailoring Secretarial and Compliance
Services Seamlessly”**

SUMMARY OF COURT ORDER SEC 97 OF COMPANIES ACT 2013

1. INTRODUCTION

The recent order by the National Company Law Tribunal (NCLT), Kochi Bench, delves into the pivotal issue of statutory interpretation of Section 97 of the Companies Act, 2013, which provides remedies for default in holding the Annual General Meeting (AGM) under Section 96 of the Act. The case before the Tribunal underscores the complex interplay between procedural compliance, statutory extensions, and the scope of “any default” as a legal term within company law jurisprudence.

2. BACKGROUND AND FACTS

- a) The Respondent company scheduled its AGM on 28.09.2024, which was subsequently postponed by notice dated 25.09.2024.
- b) Respondents sought and obtained an extension from the Registrar of Companies (RoC) under Section 96(1) proviso, which permits extension of AGM deadlines for a period not exceeding three months, a statutory relief mechanism recognizing business exigencies.
- c) The AGM was held on 15.11.2024 within this extended timeframe.
- d) Petitioners challenged the validity of this AGM, alleging procedural irregularities and misrepresentation before the RoC to obtain the extension, and simultaneously claimed election as Managing Director in the same AGM before other judicial fora.
- e) Petitioners filed an application under Section 97 alleging default in holding the AGM.

3. LEGAL FRAMEWORK

3.1 Section 96, Companies Act, 2013

- Mandates annual general meetings within stipulated timelines—15 months between AGMs, first AGM within 9 months of first financial year closure.
- Empowers RoC to grant extensions up to 3 months on special grounds.

CONTACT US



+91 77389 07923
+91 74001 16962
+91 98216 46707



info@mominjurislaw.com

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Mumbai - 400 050**



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3.2 Section 97, Companies Act, 2013

- Provides remedy to members where a company defaults in holding AGM as prescribed by Section 96.
- Use of the phrase “if any default is made in holding the Annual General Meeting” is central to the dispute on its scope.

3.3 Other Relevant Provisions

- Section 448 addresses punishment for false statements or concealment of facts before RoC.
- Secretarial Standards on General Meetings prescribe procedural norms for postponement and reconvening of meetings.

4. KEY LEGAL ISSUES

- What is the scope and ambit of “any default” in Section 97?
- Can the extension of time granted by RoC be challenged within Section 97 proceedings?
- Do allegations of misrepresentation before RoC affect the validity of AGM under Section 97?
- What is the impact of inconsistent pleadings by petitioners across judicial fora?
- Does the postponement and notice comply with Secretarial Standards?

5. DETAILED LEGAL REASONING

5.1 Statutory Interpretation of “Any Default”

- The Tribunal applied established principles of statutory interpretation, focusing on the contextual meaning of “any default” within the scheme of the Companies Act, 2013.
- Reliance on authoritative judgments from the Supreme Court of India provides crucial interpretative guidance:
 - In **NKGSB Cooperative Bank Ltd. v. Subir Chakravarty (2022 (10) SCC 286)**, the Supreme Court emphasized that the word “any” is inherently ambiguous and its meaning fluctuates depending on context, ranging from “one,” “some,” “all,” or “every.” The Court stressed the necessity of contextual and purposive construction rather than literal interpretation divorced from legislative intent.

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- The **K. Prabhakaran v. P. Jayarajan (AIR 2005 SC 688)** judgment reiterated that the generality of “any” is subject to statutory context and is not unqualified. The Court underlined that the **meanings of words in a statute must take their colour from the context in which they appear**—a cardinal principle of statutory construction.
- The decision in **Reserve Bank of India v. Peerless General Finance & Investment Co. Ltd. (1987 SCC (1) 424)** reaffirmed that statutory interpretation must harmonize text with purpose and legislative intent, ensuring no word is rendered nugatory or superfluous.
- Applying these principles, the Tribunal held that “any default” under Section 97 must be interpreted narrowly and purposively as default in holding AGM within prescribed or extended timelines under Section 96, and not extended to procedural irregularities or collateral misrepresentations.

5.2 Extension Granted by RoC Under Section 96(1)

- The RoC is vested with discretionary power to grant extension for holding AGMs recognizing practical exigencies faced by companies.
- Once such extension is validly granted, the Tribunal held it as a statutory shield protecting the company from allegations of default under Section 97, provided the AGM is held within this extended timeframe.
- The Tribunal clarified that allegations of misrepresentation or concealment to secure extension, although serious, are not relevant for determining default under Section 97, but can be prosecuted under penal provisions like Section 448.
- The distinction between procedural compliance in holding the AGM and separate penal consequences for fraud or misrepresentation is key.

5.3 Effect of Contradictory Pleadings and Good Faith Requirement

- The Tribunal observed the contradictory stances taken by the petitioners in different fora seriously undermining their credibility and good faith.
- The legal maxim “he who comes into equity must come with clean hands” was invoked to emphasize that inconsistent positions before various courts cannot be condoned.
- The failure to raise objections regarding the AGM timing and conduct at the earliest opportunity, combined with afterthought pleadings in rejoinder, indicated that the petitioners were attempting to manipulate judicial processes.

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5.4 Compliance with Secretarial Standards

- The Tribunal found that the postponement of the AGM was conducted by giving a notice well in advance in compliance with Clause 1.2.11 of the Secretarial Standards on General Meetings, which allows for postponement and reconvening on reasons beyond the Board’s control.

6. JUDGMENT HIGHLIGHTS

- The Tribunal dismissed the petition under Section 97 as no “default” had occurred in light of the valid extension by RoC and holding of AGM within the extended period.
- The scope of Section 97 was confined strictly to failure in holding the AGM timely; other irregularities fall outside its ambit.
- Allegations of fraud or misrepresentation before the RoC require separate proceedings under other penal provisions.
- Petitioners’ conduct and inconsistent pleadings eroded their credibility, and the Tribunal refused to entertain afterthought claims.
- Procedural compliance including postponement notices adhered to the Secretarial Standards.

7. LEGAL AND PRACTICAL IMPLICATIONS

- The decision underscores the importance of a purposive, context-driven interpretation of statutory language, avoiding overly expansive readings that would impose unreasonable burdens or unintended liabilities on companies.
- Companies must ensure strict compliance with timelines or seek timely extensions from the RoC under Section 96(1) to avoid exposure to default allegations under Section 97.
- Allegations of misrepresentation or concealment before the RoC, while serious, are distinct and subject to criminal or penal action under appropriate provisions like Section 448.
- Parties should maintain consistency and candor across judicial proceedings to preserve credibility and avoid dismissal on grounds of bad faith.
- Compliance with Secretarial Standards mitigates procedural challenges to AGM conduct.

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8. CONCLUSION

- This ruling is a significant authority on the interpretation of Section 97 of the Companies Act, 2013. It clarifies that “any default” under Section 97 is confined to non-holding or late holding of AGM without valid extension and does not cover collateral procedural lapses or misrepresentations, which must be pursued under other statutory provisions. It also highlights the judicial expectation of good faith and consistency from litigants. Companies should meticulously document and follow statutory requirements, including securing RoC extensions when necessary, to avoid legal challenges to their AGMs.

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